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<th>Law</th>
<th>Dates law approved and last amended</th>
<th>Categories of business entities regulated by the law</th>
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<td>Ordinance on the Recognition and Enforcement of Foreign Arbitration Awards in Vietnam</td>
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<td>Competition Law</td>
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Annex Three

Democratic Representation

Especially after the Seventh Party Congress in 1991, party leaders have increasingly invoked images of popularly elected legislatures and public accountability to depict the National Assembly (NA) as a democratic institution.¹ At a rhetorical level this discourse appeared to signal an ideological shift from orthodox socialist democracy (dan chu xa chu nghia) towards democratic representation. It will be recalled that socialist democracy emphasised Lenin’s proletariat dictatorship over bourgeois notions of popular representation through the ballot box. Revolutionary imagery now co-exists with fashionable democratic symbolism, such as a ‘state of the people, by the people and for the people’ (nha nuoc cua dan, do dan va vi dan), which evokes a modern, internationally integrated society.²

Contrasting with the revolutionary exuberance of the 1980 Constitution, Leninist terminology only vaguely resonated in the 1992 Constitution. Denoting a shift from class-based rhetoric, the expressions ‘working people’s (nhan dan lao dong) mastery’ and ‘socialist collective mastery’ (lam chu tap the xa hoi chu nghia) were substituted in the 1992 Constitution with ‘people’s (nhan dan) mastery’.³ The 1992 Constitution quietly dropped references to proletariat dictatorship, although this concept remained firmly embedded in party literature. Some writers even attempted to reconfigure democratic centralism as a democratic creed. One fatuously concluded that since Ho Chi Minh usually placed the word ‘democracy’ before ‘centralism’ in his writings, the party always promoted people’s freedoms.⁴

Party theorists coined new democratic-sounding terms to replace class-based phraseology. For example, some commentators substituted chư quyền nhân dân

¹ Papers presented at a scientific forum on democracy in Vietnam, convened by the editorial board of Tap Chi Cong San (Communist Review) in 1990, uniformly followed orthodox socialist democracy ideals. The liberal democratic images promoted at the Seventh Party Congress in 1991 were smuggled into party rhetoric under the rubric of Ho Chi Minh thoughts. See e. g. Nguyen Dang Quang, 1991 ‘Fundamental Contents of the Democracy Concept’ Vietnam Social Sciences (1) 69–73.
² The term was formally adopted by an amendment to the 1992 Constitution made by Resolution No. 51 20011QU10 on Amendments and Supplements to a Number of Articles of the 1992 Constitution of the Socialist Republic of Vietnam, 2001, article 1.
³ The term ‘collective mastery’ appeared 17 times in the 1980 Constitution, but only six times in the 1992 Constitution. Also see Constitution 1992, article 3. Also see article 9 enjoining the Fatherland Front to ‘encourage the people to exercise their rights as masters’.
(people’s sovereignty) for ‘collective mastery’ and ‘people’s mastery’. Others used *phap luat lay chi chung cu xa hoi* (law reflects the general will of society) to replace ‘law reflects the will of the ruling class’.⁵ According to these reformulations, ‘the people’s right to mastery is institutionalised into law and carried out in a legal framework.’⁶ Collectivism is no longer promoted as the path to self-perfection and a socialist utopia. Instead, people’s mastery symbolises popular participation in state administration through elected candidates and membership of mass organisations.

Some officials working in the Office of the National Assembly believe that democratic imagery is largely (although not entirely) used rhetorically to present a ‘democratic face’ to Western donors sponsoring institutional reforms and foreign and domestic critics.⁷ They stress that democratic ideals should be assessed against the party’s insistence that democratic processes in the NA remain under party leadership (see chapter seven).⁸ Party leaders have consistently voiced the concern that ‘unlimited’ democracy may excite independence from party leadership.⁹ They insist that ‘democracy must go together with order and discipline; democracy must not be developed in an extremist and one-sided manner, and discipline, centralism and unity are not to be belittled.’¹⁰ Official writings reject unlimited democracy as ‘peaceful evolution’ (*dien bien hoa binh*)—an attempt by Vietnam’s enemies to achieve through peaceful means what they could not achieve through force, that is, to remove the party from power.¹¹

The transfer of democratic liberal ideology into Vietnam faces considerable opposition from the dominant socialist ideology. It is argued in chapter seven that for state

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⁵ See Nguyen Dang Dung, 2001 ‘Phap Luat Khong Chi La Cong Cu Cua Nha Nuoc’ (Law is Not Only an Instrument of the State) *Nghien Cuu Lap Phap* (Legislative Studies) 11.


¹⁰ Nguyen Phu Trong, 1996 *supra* 24, 27.

¹¹ The anti-peaceful evolution campaign began in 1994 and focused on attempts to introduce multiparty democracy and social democratic ideology. See Pham Thanh Nguyen, 1998 ‘The People’s Army Improves Its Political Skill and Intellectual Capacity to Successfully Implement the Party’s Line in the New Period’ *Tap Chi Quoc Phong Toan Dan*, February, 6–9, trans., FBIS East Asia Daily Report, 98–85, 26 March
legislative bodies to acquire more popular legitimacy, political discourse must open to non-party voices. But democratic pluralism is resisted, because it challenges party assertions of moral superiority. As we have seen, the party has historically generated legitimacy by monopolising the formulation of the political morality. Without a political morality supporting effective choice between different outlooks, there is little social pressure on the party to increase representative democracy.

The preceding discussion implies that democratic liberal ideals of representative democracy have not deeply penetrated the dominant political-legal ideology. Party leaders appropriate democratic liberal symbols for political advantage, but political pluralism and multi-party democracy remain inimical to core socialist ideology. Public discourse outside the party-state orbit is discouraged, effectively quarantining socialist democracy ideology from competing ideologies. Chapter seven argues, however, that market forces are compelling the party to experiment with an Asian-style of democracy (or state corporatism) in which authorities bestow favours (ban on, chieu co) on social groups in order to participate in lawmaking activities.

**Civil rights**

The question of how much space governments should allow citizens to pursue personal interests varies among and within all modern states. There are conflicting messages in Vietnamese ideological writings whether the party recognises legal space beyond the party and state orbit. Xa hoi cong dan (citizen society) theory locates legal obligations

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12 In the years immediately following do moi reforms, writers and intellectuals were encouraged to criticise middle level party cadres, question socialist collectivism and even party state relationships. Some cadres suggested multi party democracy. This flirtation with political openness was cut short in 1989 when the collapse of socialism in Eastern Europe threatened party interests in Vietnam. See Ho Anh Thai, 1998 ‘Creative Writers and the Press in Vietnam Since Renovation’, in David Marr ed., *Mass Media in Viet Nam*, Political and Social Change Monograph 25, Research School of Pacific and Asian Studies, Australian National University, Canberra, 59–63. Those promoting representative democracy, such as dissident intellectual Ha Si Phu (Nguyen Xuan Tu), are placed under house arrest and threatened with charges of treason. Ha Si Phu drafted an open letter appealing for more democracy. See Human Rights Watch, 2001 ‘World Report, Vietnam’ <www.hrw.org/wr2k1/asia/vietnam.html>.
13 See Martin Gainsborough, 2002 ‘Political Change in Vietnam’ 45 *Asian Survey* (5) 706-707. David Marr shows that neo-Confucian values were antipathetic to the egalitarian notions underlying representative democracy. See David Marr, 1981 *supra* 107–115.
and civil rights in citizenship. It explicitly rejects the substantive ‘rule of law’ notion that personal legal rights (civil rights) are inherent individual (ca nhan) rights.\(^\text{15}\)

The party and state stress that citizens’ rights are contingent on broader collective or public benefits.\(^\text{16}\) Party commentators condemn ‘individualism’ (chu nghia ca nhan) as a source of moral decay. Its origins are attributable to a diverse mix of ‘feudalism’, Western petty bourgeois thought, and even command planning.\(^\text{17}\) Individualism is depicted as promoting self-interest to the detriment of ‘collective’ or ‘community’ benefits and eroding community morality. Do Muoi echoed this thinking when he said:

> Freedom has its limitation. The limitation is for the righteous benefit of the community, the development and improvement of society. Laws defining citizen rights are not for the benefit of a single person or a group of people. Citizens’ rights and duties are determined by the level of economic development, culture and education. When citizens follow the Constitution and the laws, they are actually enjoying true freedom.\(^\text{18}\)

Responding to rural unrest and foreign criticism, the Party Central Committee issued Decree No. 29 on Grassroots Democracy 1998 to guide the establishment of ‘grassroots democracy’ (dan chu tan goc).\(^\text{19}\) It formalised reforms that made village officials more publicly accountable through greater procedural transparency. In establishing disclosure and compliance procedures, ‘grassroots’ democracy seemed to invest individuals, rather than collectives, with civil rights to resolve wrongdoing.

\(^{15}\) It rejects the notion that natural or customary rights exist outside the party–state orbit. See Le Hong Hang, 1998 Giao Trinh Ly Luu Nha Nuoc va Phap Luat (Text Book on State and Law), Nha Xuat Ban Cong An Nhan Dan, (People’s Police Publishing House), Hanoi, 437.


\(^{17}\) In Vietnam, social control is still widely perceived as a problem of state control. The notion of due process that values the primacy of the individual does not enjoy support at either an elite or local level. See interviews with Phan Huu Chi, supra. Also see Nguyen Chi My, 1989 ‘Chu Nghia Ca Nhan va Cuoc Dau Tranh De Khac Phuc No’ (Individualism and the Struggle Against It) Tap Chi Cong San (6), 36, 37–38; Pham Huy Ky, 1999 ‘Chu Nghia Ca Nhan: Dac Diem Bieu Hien va Bien Phap Khac Phuc’ (The Ways of Avoiding Individualism in Society) Nghien Cuu Ly Luu (Theoretical Studies) (2) 46, 46–48.


Some commentators skeptically dismissed these reforms as *su chung luat* (legal vaccinations) designed to forestall far-reaching change.\(^{20}\) They argue that the state concessions to social pressure do not necessarily indicate movement towards civil rights. Concessions frequently evaporate once trouble subsides. Progress towards civil rights requires a profound change in state toleration of political ‘lobbying’ (*chay lo thu tuc*), demonstrations and ultimately political pluralism.

According to this account, ‘grassroots’ democracy sanctions spontaneous demonstrations as a safety valve for the release of public frustration, without recognising a state-society compact where public dissent is seen as a legitimate means of influencing government policy. Civil rights are bestowed by benevolent regulators and are not considered inherent or achieved rights. Party leaders only reluctantly (if at all) recognise the possibility that civil rights are generated by autonomous social interaction between the state and social organisations such as religions, workplaces, unions and professional organisations (see chapter seven).\(^{21}\)

Some academic writers argue for a dialogical relationship between law and social ethics in which each acts on the other.\(^ {22}\) Laws are no longer merely ‘the servants of state policy’, they are ‘tools for organising or constraining public power’ (*tinh phap ly trong viec to chuc quyen luc nha nuoc*).\(^ {23}\) This narrative rejects the extreme legal positivism promoted by socialist legality in favour of the notion that ‘states do not “create” law, they only formalise social principles and conduct’.\(^ {24}\) The final report of the Legal Needs Assessment (LNA), drafted under the auspices of the Ministry of Justice in 2002, went further by advocating the ‘principle that citizens may do everything not expressly prohibited by law’.\(^ {25}\)

It is unlikely this declaration in the LNA signals a fundamental shift in official political-legal ideology, since it was largely conceived by foreign lawyers advising the Ministry

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\(^{21}\) See Michael Grey, 1999 ‘Creating Civil Society? The Emergence of NGOs in Vietnam’ *30 Development and Change* 693–713.

\(^{22}\) See Hoang Thi Kim Que, 1999 ‘Mot So Suy Nghí ve Moi Quan He Giua Phap Luat va Dao Duc Trong He Thong Dieu Chinh Xa Hoi’ (Some Thoughts on the Relationship between the Law and Ethics in the Social Regulatory System) *Nha Nuoc va Phap Luat* (7) 16–19.

\(^{23}\) Author Unknown, 1996 *supra* 112–118; Pham Duy, 2000 ‘Phap Luat Thuong Mai Viet Nam Truoc Thach Thuc Cua Qua Trinh Hoi Nhap Kinh Te Quoc Te’, (Commercial Law Faces the Challenges of International Economic Integration), *Nha Nuoc va Phap Luat* (6) 9, 14–15.

\(^{24}\) See e.g. Nguyen Duy Quy, 1994 *supra*, 33.

\(^{25}\) According to informants from the Centre of Applied Legal Research in the Ministry of Justice, the final LNA report was largely drafted by John Bentley and Theodore Parnell, both were UNDP legal advisors. See Ministry of Justice, 2001 ‘Comprehensive Legal Needs Assessment for the Development of Vietnam’s Legal System from 2001-2010’, unpublished paper, November, Hanoi, 25.
of Justice. The final report of the LNA has not been officially accepted by the Politburo. A highly technical Legal Sector Development Strategy, released by the Ministry of Justice in 2005, does not mention the ‘rule of law’ ideals that were so prominently displayed in the LNA report.\footnote{The LNA reports were sent to the Prime Minster and Politburo for approval in November 2002. After a long silence the party Internal Affairs Committee, incollaboration with state bodies stripped the LNA of its neo-liberal legal context and drafted a narrow legislative agenda called the Legal Sector Development Strategy.}

Even progressive legal thinkers, such as Pham Duy Nghia, believe that the official political-legal ideology does not yet accept the notion that ‘we can do anything that the law does not prohibit’ (co the lam tat ca những gì luật không cam).\footnote{Pham Duy Nghia, 2000 ‘Phap Luat Thuong Mai Viet Nam Truoc Thach Thuc Cua Qua Trinh Hoi Nhap Linh Te Quac Te’ (Commercial Law Faces the Challenges of International Economic Integration) \textit{Nha Nuoc va Phap Luat} (6) 9–18; Le Minh Thong, 2003 ‘Mot So Van De Phap Ly Cua Qua Trinh Toan Cau Hoa’ (Some Legal Issues on Globalisation) \textit{Tap Chi Nghien Cuu Lap} (1) 65-75.} He considered this ideal a ‘melody for the future’ (nhu van dieu nhac cua tuong lai). A more representative understanding of civil rights is found in article two of the Civil Code 1995. It protects civil rights in descending order of priority: state, communal (cong cong) and individual.\footnote{The term ‘cong cong’ translates as ‘public’, but is construed as meaning ‘communal’ interests. This interpretation was gleaned from interviews with Bui Thi Mai Lan, Legal Expert, Department of Civil Law, Ministry of Justice, Hanoi, March 1999.}

To recap, civil rights ideals have not displaced the dominant socialist legality ideology in Vietnam. The party vigorously opposes the notion that civil society can shape the ethical basis of legal rights. Socialist political-legal ideology supports party monopolisation of the content and extent of civil rights with a highly positivistic doctrine that only countenances rights emanating from the state. Ideological discourse, moreover, does not support the democratic liberal view that in pluralistic societies no single group or idea should predominate. As a consequence, the party and state do not recognise inherent or socially generated civil rights.\footnote{See Michael Gray, 1999 ‘Creating Civil Society? The Emergence of NGOs in Vietnam’ \textit{Development and Change} 693–713; Joerg Wischerman and Nguyen Quang Vinh, 2003 ‘The Relationship between Civil Organizations and Governmental Organisations in Viet Nam: Selected Findings’, in Ben J. Kerkvliet, Russell H. K. Heng and David W. H. Koh eds., \textit{Getting Organised in Vietnam}, Institute of Southeast Asian Studies, Singapore, 185, 210-217.}
Annex Four
Sketching Party and State Structures

The Communist Party of Vietnam (CPV)
Communist party structures have remained remarkably stable since the late 1940s. Recalling the 1959 and 1980 Constitutions, the 1992 Constitution describes the party as the ‘force leading the state and society’. But there are few other references in the law defining the relationship between the party and state.
The Party Statute 1996, which is not a legal document, organises the internal party structure and provides some basic principles governing party and state relationships. At the central level, the politburo (bo chinh tri) and central committee (uy ban trung uong) lead the party. An extensive branch network mirrors the four state levels: central, city/provincial, district/ village, and ward/commune. The politburo (comprising 18 to 20 persons) makes decisions that bind all party members. Below this level the central committee (comprising approximately 180 persons) meets two or three times a year to formulate detailed policy and resolutions regulating every aspect of Vietnamese society. The central committee acts as a permanent standing committee for the National Congress of Delegates (Dai Hoi Dang Toan Quoc) held every five years. About 1200 representatives are selected from party members to sit in the National Congress. Non-party members are largely excluded from the process.
Numerous committees (uy ban), commissions (ban) and offices (van phong) conduct the daily business of the central committee. Among the most powerful is the Central Organising Commission (Ban To Chuc Trung Uong), which appoints party officials and nominates candidates for senior state positions including the prime minister, ministers, senior judges and procurators. The Central Internal Affairs Commission (Ban Noi Chinh Trung Uong) coordinates and oversees law and security matters for the party, and closely monitors state institutions such as the National Assembly, Supreme People’s

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2 Constitutions preceding the 1992 Constitution described the party as the ‘only force leading society’.
4 See Party Statute 1996, articles 9-17 for a description of the party organisation.
5 See Quan Xuan Dinh, 2000 ‘The Political Economy of Vietnam’s Transformation Process’ 22 Contemporary Southeast Asia (2) 360, 364.
Court, Supreme People’s Procuracy, Ministry of Justice and other key bodies concerned with law and order.6

Party decision-making reflects democratic centralism (tap trung dan chu), the organisational doctrine devised by Lenin to ensure that senior party leaders dominate inferior party branches (see chapter three).7 Commentators variously describe high-level party decision-making as consensual or nhat tri (unanimity).8

Mass organisations

In contrast to the vague legal relationship governing party and state relationships, the Law on the Vietnam Fatherland Front 1999 clearly delineates the connections between mass organisations and state institutions.9 While article 6 of the law requires the Fatherland Front to 'promote prominent individuals in various social classes, strata, ethnic groups and religions to mobilise the people to fulfil the political, socioeconomic, national security and defence and external affairs tasks of the state.' Separate mass organisations are formed for each social grouping. Organisations represent people according to age (Youth League and Senior Citizen Organisations), gender (Women’s Union), industries (Bankers Association), workers (Vietnam General Confederation of Labour (VGCL)), employers (Ho Chi Minh City Union of Associations of Industry and Commerce (UAIC)) (Hiep Hoi Cong Thuong Thanh Pho Ho Chi Minh) and farmers (Hoi Nong Dan).

Most (but not all) mass organisations mirror party structures with central, city/provincial and district/village branches.10 They perform two main functions: ‘motivate the public to implement the party’s lines and policies. At the same time, they must supervise their implementation.’11 Party control over mass organisations is maintained by a policy that

9 Decree No 50/ND-CP Detailing the Implementation of a Number of Articles of the Law on Vietnam Fatherland Front, 2001, articles 2, 5, 21.
10 Law No. 14 QH10 on Vietnam Fatherland Front 1999, article 3.
only permits party candidates to stand for senior positions and membership of internal ‘party groupings’ (dang doan).\textsuperscript{12}

Developing state institutions

The 1946 Constitution based the foundations for the modern Vietnamese state on Western state institutions: a National Assembly, Presidency, Executive and Court structure.\textsuperscript{13} Soviet influence appeared in the 1959 Constitution, which retained the original Western organisational structure, but added a people’s procuracy (Viện Kiểm Sat Nhân Dan). The 1980 Constitution drew more deeply from socialist models. Based on the Soviet Constitution 1977, it adopted the Soviet ‘collective presidency’ and abolished the presidency left vacant since Ho Chi Minh’s death in 1969.\textsuperscript{14} The new Council of State functioned as head of state and performed many legislative functions devolved in the Constitution to the National Assembly. Even terminology changed to reflect Soviet practices. The Government Council (Hội Đồng Chính Phủ) was given the Soviet designation Council of Ministers (Hội Đồng Bộ Trưởng). In one of the few deviations from the Soviet template, the National Assembly retained powers to approve (and remove) the leaders of state bodies, but it otherwise resembled the Supreme Soviet.\textsuperscript{15}

Later, when Soviet influence declined, the National Assembly adopted a new Constitution in 1992 (the fourth since 1946). Reflecting the increased importance of legislation in post-\textit{doi moi} society, the new Constitution invested the NA with powers exceeding those given to Soviet and Chinese legislative bodies.\textsuperscript{16} It rearranged powers and responsibilities among the five branches of the state (National Assembly, President, People’s Courts, People’s Procuracy and Government (executive)). It also re-established

\textsuperscript{12} See Communist Party of Vietnam Statute 1996. For a discussion about contemporary party leadership over mass organisations see Nguyen Duc Trieu, 2001 ‘Su Lanh Dao Cuu Dang Doi Voi Hoi Nong Dan Viet Nam-Mot Nhan To Quyet Dinh Thang Loi Su Nghiep CNH, HDH Nong Nghiep, Nong Thon’ (The Leadership of the Party towards the Vietnam Peasants’ Association—a Factor Deciding the Victory of Agriculture and Rural Industrialisation and Modernisation’ \textit{Tạp Chí Công Sản} (3) 25, 25-28; See Vu Oanh, 1993, \textit{supra} 3.


\textsuperscript{14} See David Lane, 1985 \textit{State and Politics in the USSR}, Blackwell, Oxford.


the four levels of state governance: central, city/provincial, district/ village, and ward/commune.

The 'concentration-of-power' doctrine that guides state power distribution is best understood as specialisation, rather than separation of powers. As in democratic liberal countries, specialisation is incomplete and the legislature and government perform overlapping functions (administration, legislation and quasi-judicial). The government, for example, issues significantly more legislation than the NA and performs many quasi-judicial functions such as resolving land disputes and administrative petitions. It is an unrealistically simple constitutional model that sees the legislature only legislating, and the executive only implementing laws. What protects private rights against abuses in democratic liberal countries are checks and balances preventing the accumulation of power in any one state institution. This chapter explores whether the accumulation of power in the party threatens private legal rights in Vietnam. Subsequent chapters investigate how power imbalances between the NA and executive change the meaning of imported law.

The contemporary institutional framework

The National Assembly (Quoc Hoi)
In constitutional theory, state power is unified (thong nhat) and centralised (tap trung) in the National Assembly. It sits as a unicameral body and in principle exercises ultimate constitutional and legislative power. Citizens over the age of 18 elect 500 delegates for five-year terms.

The NA performs three main functions: legislating, supervising other state organs and approving socioeconomic plans and state budgets. Before doi moi reforms it sat infrequently, leaving the Government Council (Hoi Dong Chinh Phu) and ministers to

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17 In discussing the centralisation of NA powers, Nguyen Cuu Viet referred to Vietnamese translations of Montesquieu's De L'Esprit Des Lois (Thinh Than Phap Luat) published by the Education and Law Publisher, Hanoi University of Social Sciences and Humanities, 1996 and Rousseau's 'Social Contract'. Both texts were originally translated during the late colonial period. See generally Nguyen Cuu Viet, 1997 'Nhan Thue Ve Nguyen Tac Tap Quyen va Vai Khia Canh Trong Van De Ve Quan He Giua Lap Phap va Hanh Phap O Nuoc Ta Hien Nay' (Some Perceptions of the Principles of “Unity of Power” and Few Aspects of the Relationship Between the Legislative and Executive of Bodes of Vietnam Today), Nha Nuoc va Phap Luat (2) 44, 47-49.

18 In 1997 the National Assembly and Standing Committee issued nine laws and ordinances, the Government issued 57 decrees and ministers promulgated 357 sub-ordinate rules. See Truong Thanh Duc, 1999 'Nhung Bat Cap Trong Viec Xay Dung va Ban Hanh Van Ban Quy Pham Phap Luat' (Defects in Drafting and Promulgating Legal Instruments) Nha Nuoc va Phap Luat (2) 22, 24.

19 See Dao Tri Uc, 2001 'Xay Dung Nha Nuoc Phap Quyen Xa Hoi Chu Nghia Duoi Su Lanh Dao Cua Dang' (Building Up the Law-Based-State Under the Leadership of the Communist Party) Nha Nuoc va Phap Luat (7) 3-4.

rule through administrative edicts.\textsuperscript{21} With the increasing ideological importance of legal formalism (discussed in chapter three) the NA has become a highly active legislature, enacting numerous codes (\textit{bo luat}), laws (\textit{luat}) and resolutions (\textit{nghi quyet}) each year. Best understood as a governing or ruling committee, the NA Standing Committee (SC) controls the NA with broad managerial powers that are reminiscent of the Soviet Presidium—the original model for the SC.\textsuperscript{22} For example, the SC is the supreme lawmaking body during NA adjournments. Between 1995 and 1998 the NA passed 23 laws while the SC passed 29 ordinances (\textit{phap lenh}). The SC determines the legislative agenda, NA sitting times, voting on the removal of NA delegates and no-confidence motions in senior state officials.\textsuperscript{23} As discussed in chapter seven, some NA delegates are becoming more responsive to their constituents.

Supervision over other state bodies takes two forms. The NA can overrule subordinate legislation passed by the government, Supreme People’s Court and Supreme People’s Procuracy, though this power is rarely exercised. It also elects the president, vice-president, chairman and vice-chairman of the NA, prime minister, chief justice and chief procurator.\textsuperscript{24} The People’s Inspectorate, which is controlled by the NA Standing Committee, investigates legal compliance by state bodies.

\textbf{President (\textit{Chu Tich Nuoc})}

Vietnam is one of the few presidential systems in the socialist world.\textsuperscript{25} The personal authority of incumbents, more than their constitutional powers, determines presidential authority. After President Ho Chi Minh, incumbents have played a much less prominent role in Vietnamese political-legal life.

As head of state, presidents primarily perform honorary and ceremonial duties. Among their few substantive functions, presidents pass ordinances that implement NA legislation, and recommend to the NA the appointment and removal of the vice-president, prime minister, deputy chief justice, supreme court judges, the deputy chief

\textsuperscript{21} The Standing Committee of the National Assembly passed legislation during this time. See Bernard Fall, 1956 \textit{The Viet-Minh Regime: Government and Administration in the Democratic Republic of Vietnam}, reprinted 1975 Greenwood Press, Westport, 12; See Nguyen Cun Viet, 1997 \textit{supra} 47-49.

\textsuperscript{22} The 1992 Constitution replaced the State Council (modeled on the Soviet Presidium) with the Standing Committee without significantly changing its functions.

\textsuperscript{23} Law on the Organisation of the National Assembly 2001, articles 7-8, 64, 88. Support from over 25 per cent of NA delegates is required to initiate a vote of no confidence in state officials.

\textsuperscript{24} Constitution 1992, articles 86-88.

\textsuperscript{25} The presidential system was abolished by the 1980 Constitution and replaced by a collective presidency (Council of State) modeled on the Supreme Soviet. The 1992 Constitution reinstated the presidency. Both East Germany and the Democratic Republic of Vietnam maintained the longest running socialist presidencies. See Brunner, 1987 \textit{supra}. 

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procurator and members of the People’s Inspectorate. Presidents also have ‘overall command of the armed services’.

**Government (Chinh Phu)**
The government is the central executive organ. The 1946 Constitution concentrated state power in an executive organ (government) comprising the president, prime minister and other ministers. The collective governmental model, based on the Soviet Council of Ministers, was introduced by the 1959 Constitution. Despite name changes, this basic structure remained intact until the 1992 Constitution. By this time it was clear that the collective decision-making model, which was designed to manage a command economy, failed to generate the levels of personal responsibility required for market regulation. Aiming for more transparent lines of authority and accountability, the 1992 Constitution abolished the Council of Ministers (Hoi Dong Bo Truong), replacing it with ‘one leader’—the prime minister—and a cabinet comprising a deputy-prime ministers and ministers (Government Council Hoi Dong Chinh Phu) (Government). Like the president, prime ministers are appointed by, notionally accountable to, and must be members of the NA. They recommend (to the NA) the appointment and dismissal of deputy-prime ministers and Government ministers—further entrenching their pivotal role in the state hierarchy.

The government meets monthly and by majority vote deliberates on a range of responsibilities enumerated in the Law on the Organisation of the Government 2001. The prime minister ‘leads’ the work of the government, and ‘guides and coordinates’ the activities of government members. According to organisational protocols, most important decisions require a majority vote of members in plenary meetings. But in practice decision-making is highly centralised, with the prime minister issuing approximately 20 legal documents every working day. Close decision-making

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26 Constitution article 103, 106; Law on the Promulgation of Legal Documents 2002, article 50.
27 Constitution 1946, article 44.
28 Constitution 1959, article 71.
29 The shift from collective-decision making was also partially connected with the abandonment of collective ownership. Interview Nguyen Chi Dung, Director of International Relations, Office of National Assembly, Hanoi, January 2000.
31 Constitution 1992, article 112.
32 In addition to the Prime Minister, the Government, which was formed in July 2002, has three deputy-prime ministers and twenty-six ministers in charge of twenty ministries and six ‘ministerial level offices’.
linkages between the party and government are suggested by the fact that most ministers are either members of the politburo or the central party committee.

Government duties are distributed to ministries handling discrete portfolios such as foreign affairs, defence, internal security, law and commerce.34 As well as ministries and ‘ministerial-level agencies’, there are a number of ‘government-affiliated agencies’ outside the ministerial structure that function with varying degrees of autonomy. Central ministries are divided into two categories: ‘functional’ and ‘line’. In theory functional ministries (e. g. State Bank and Ministry of Planning and Investment) have crosscutting powers that regulate activities performed by line-ministries (e. g. Ministry of Trade and Ministry of Public Security). This administrative structure, which consists of parallel functional and coordinating ministries, is a legacy of Soviet command regulation, and as subsequent chapters reveal, it is responsible for many administrative overlaps and regulatory uncertainties.

For much of the anti-American war (1961-1975) the Ministry of Justice (Bo Luat Su now called Bo Tu Phap) was disbanded and its duties were performed by internal state security, police and party groups.35 It was re-established in 1981 to unify the administration of justice, participate in legislative drafting, disseminate legal information, train lawyers and administer provincial and district level courts.36 Its power within the government has grown along with the increasing importance of law.

The government issues numerous resolutions (nghi quyet) and decrees (nghi dinh) to administer society. Below this level, the prime minister issues decisions and directives (chi thi) and ministers promulgate circulars (thong tu) to regulate their respective portfolios. In addition, the prime minister can annul legislative instruments passed by ministers and provincial/city level people’s committees that contravene the Constitution and laws.

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34 Constitution 1992, article 109.
36 Circular No. 3831/TP on Some Immediate Work to be Done by the Judiciary Sector to Implement the 5th Party Congress Resolution, Ministry of Justice, first reproduced in Phap Che Xa Hoi Chu Nghia (Socialist Legality) (2) April 1982, 8-10, 15, trans., JPRS-1978 25 January 1983, 88-94. For a more recent statement of powers see Decree on the Organisation of the Ministry of Justice 1993, article 4.
Local government
Vietnam has a unitary system of government, with centralised state authority exercised over local administrations. Prior to doi moi reforms, party committees performed many local government duties. Reforms introduced by the 1992 Constitution and Law on the Organisation of People’s Councils and People’s Committees 1994 aimed to clarify the division of powers among local authorities. People’s councils (hoi dong nhan dan) and people’s committees (uy ban nhan dan) are respectively the elected legislatures and appointed executive bodies. People’s committees are subordinated to the government, but people’s councils are not subordinated to the NA.

Although both people’s councils and people’s committees promulgate subordinate legislation, the real power resides in people’s committees, because they control the budget and administration. They implement state policy through specialised departments (for example, housing and land, industry and health) operating at the city/provincial and district/village levels. According to democratic centralism principles, authority within local government is strictly hierarchical and lines of authority descend from the city/provincial level to lower administrative levels.

In practice party organs dominate decision making in many (but not all) local governments. Many party cadres have positions in people’s councils and committees and the chief of the party committee is usually the deputy chair of the people’s committee at the corresponding level.

The ‘dual accountability’ (song trung true thuoc) system further complicates the relationship between central and local authorities. Central ministries (e.g. Ministry of Justice) have branch offices (e.g. provincial justice departments) that function as part of the people’s committee machinery. ‘Dual accountability’ is supposed to make local

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37 The 1946 Constitution divided the DRV into four administrative levels: central, cities (thanh pho) and provinces (tinh); urban (quận) and rural (huyện) districts; and urban wards (phường) and rural communes (xa). Local government grew out of the extensive Viet Minh committees (Viet Nam Doc Lap Dong Minh). Order No. 63 on the Organisation of Peoples Councils and Administrative Committees, November 22, 1945 (issued before the Constitution) devolved legislative power to local authorities (peoples councils) subject to the direction of higher level authorities. See Bernard Fall, 1956 The Viet-Minh Regime: Government and Administration in the Democratic Republic of Vietnam, Greenwood Press, Westport, Conn. 24-29.


40 People’s councils issue resolutions and people’s committees issue decisions and directives.
decision-making more accountable to central law and policy. But as the following chapters show, in practice local branches often owe their primarily allegiance to the people’s committee that housed and recruited them.

True vertical (doc) structures governing central agencies such as the police, military, procuracy, courts and Taxation Department are not subject to the direct control of local governments and arguably more faithfully implement central rules. Regionalism (dia phuong chu nghia), as we shall see, also plays an important role in moderating central political and legal power.

**People’s courts (Toa An Nhan Dan)**

Courts are established at three state levels—central, provincial and district. At the central level, the Supreme People’s Court (SPC) (Toa An Nhan Dan Toi Cao) is the highest judicial body. It performs judicial review (cong tac xet xu) and supervision over decisions made by provincial courts. It is comprised of a chief judge (appointed for a five-year term by the NA) and five deputy chief judges leading the six jurisdictional divisions (in the six jurisdictional areas (criminal, civil, administrative, economic, labour and military). The SPC is further divided into a Judicial Council (Uy Ban Tham Phan) (the highest adjudicator) and three Appellate Courts (Toa Phuc Tham) located in Hanoi, Da Nang and Ho Chi Minh City. In ‘close coordination’ with local people’s committees, the Supreme Court now manages and appoints lower-level judges. By giving the Supreme Court management over subordinate courts, party leaders introduced reforms in 2002 that aimed at increasing judicial independence from the executive branch of government (discussed in chapter six).

At the second hierarchical level, 63 provincial/city courts resolve first instance and appellate cases. Like the Supreme Court, they are divided into six jurisdictional

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41 This system initially evolved from the French colonial system, but by the 1950s it was strongly influenced by Chinese organisational principles. Interview, Nguyen Thuc Bao, Former Legal Adviser to Ministry of Agriculture, Hanoi, September, 2000.
42 See Constitution 1992, article 134. Also see the Law on the Organisation of the Peoples Court 2002, article 2.
43 In November 2002 there were 97 Supreme Court judges. Interview Hoang Khang, Deputy Chief Justice (Civil Law), Hanoi, November 2002.
chambers or divisions. Over 600 district level courts in urban (quan) and rural (huyen) districts comprise the lowest court level. They hear first instance cases concerning civil, economic and criminal cases.

People’s procuracy (Vien Kiem Sat Nhan Dan)
The procuracy was established in Vietnam during the 1960s as the fifth branch of the state. Based on a Soviet institution designed to implement democratic centralism, they have no counterpart in Western legal systems. Like courts, procurators are located at three administrative levels (central, city/provincial and district/village) and are vertically (doc) administered from the central level down. This top-down organisational structure assists procurators to enforce ‘democratic centralism’ by supervising the legal compliance of courts.

Constitutional reforms in 2001 removed some, but not all the functions given to the procuracy to supervise socialist justice. For example, procurators no longer monitor the legality of state institutions, mass organisations and commercial firms, although they still monitor legal institutions, especially the courts. Powers granted under the socialist legal system to both investigate and prosecute in criminal trials were also retained. Further compromising their impartiality, procurators are required by law to ‘protect socialist legality, the socialist regime, the people’s right to mastery and state property’ ahead of private legal interests. This involves appealing against judgements in civil and economic cases to protect the ‘state benefit’ (loi ich cua nha nuoc).

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46 Law on the Organisation of People’s Courts 2002, article 27. In practice most provincial courts have so few economic and administrative cases there is no specialisation. Interview Do Cao Thang, Chief Judge Economic Court, Hanoi People’s Court, Hanoi, March 2003.
49 See V M Letsnoi, 1961 ‘Viec Bao Dam Phap Che Xa Hoi Chu Nghia’ (Ensuring Socialist Legality), Tap San Tu Phap (11) 45, 47-49.
52 See Pham Hong Hai, 2001 ‘Mot So Y Kien Ve Sua Doi Hien Phap 1992 Lien Quan Toi To Chuc va Hoat Dong Cua Vien Kiem Sat Nhan Dan’ (Some Opinions on Amending the 1992 Constitution Concerning the Organisation and Activities of the People’s Procuracy) Nha Nuoc va Phap Luat (9) 64, 65-66.
Annex Five

Cultural and Legal Borrowing Discourses

Cultural discourse
For centuries Vietnamese intellectuals viewed the interaction among kinh people (ethnic Vietnamese) and foreigners in a cultural framework. ¹ Contemporary writers have continued to be fascinated by the role culture plays in social and economic development. Some themes in this highly variegated discourse suggest that attitudes to cultural identity construct the ‘reality’ in which officials approach legal borrowing. ² They also offer glimpses into the puzzling question whether laws transplant the same way as other cultural artifacts?

Some commentators portray Vietnamese culture as being engaged in dialogue with foreign influences. ³ They claim that during the late nineteenth century most Vietnamese intellectuals treated French culture with disdain. Later, when traditional values proved unable to combat colonial domination, prominent Vietnamese began selectively borrowing imported precepts and practices. Nationalist leaders such as Phan Chu Trinh, and to a lesser extent Phan Boi Chau, were influenced by French legal ideas such as civil rights and constitutionalism. Later still, lessons learnt by Ho Chi Minh in Europe, the Soviet Union and East Asia from 1910 into the 1930s are thought to have revitalised opposition to colonial rule. ⁴ An enduring dilemma in this narrative is how to preserve the domestic cultural ‘essence’, while benefiting from foreign ideals and practices.

³ See e. g. Dao Tri Uc and Le Minh Thong, 1999 ‘Su Tiep Nhan Cac Gia Tri Phap Ly Phuong Dong va Phuong Tay Doi Voi Su Phat Trien Cac Tu Tuong Phap Ly Viet Nam’ (Reception of Oriental and Occidental Legal Values in the Development of Vietnamese Legal Ideology) Nha Nuoc va Phap Luat (5) 3-10. These views are similar to those expressed by David Marr in David Marr, 1971 supra 140–145, 168–170; David Marr, 2000 supra 774–788.
During the post-

\textit{doi moi} period, commentators have mainly searched foreign cultures for values that strengthen the domestic economy, paying particular attention to the capacity for 'Asian values', especially Confucianism, to stimulate entrepreneurial development (discussed below). A central theme is that culture is not a static entity, but rather 'it is a type of relationship in which parts from different origins are combined and stuck together until they make an organic unified form'. Some commentators from this tradition attribute Vietnamese with 'flexible behaviour' (\textit{ung xu}) that is suited to cultural borrowing and adaptation. The message sent by this discourse to contemporary leaders is that cultural exchanges invigorate and renew domestic political, economic and legal values.

This idea that foreign cultures can strengthen domestic political and economic practices strongly conditions some approaches to cultural borrowing. Those promoting cultural exchanges warn against an exaggerated national identity that inhibits learning from others. Some commentators use empirical data to rebut assertions that globalisation is undermining Vietnamese values. A unifying thread in this discourse is the belief that the usefulness of foreign cultural values should be evaluated according to their capacity to improve Vietnamese social and economic conditions.

Contrasting with this portrayal of Vietnamese culture in dialogue with foreigners, a competing discourse depicts Vietnamese as heroic resisters against foreign domination. As Marxist-Leninism loses heuristic power in the post-

\textit{doi moi} environment, party leaders are searching for a Vietnamese cultural response to triumphant liberal capitalism. To this end they are reconfiguring the 'Great Unity' (\textit{dai doan ket}), an imagined unifying set of cultural values first proposed by Ho Chi Minh. Party writings initially

\textit{Ngoc Hien, 1996 ‘The Strength of Culture and The Development of Culture’ Vietnam Social Sciences (5) 28, 31–33.}

\textit{5 See e.g. Pham Duc Thanh, 2000 ‘Some Ideas about Culture and Development in East Asia’, in \textit{Asian Values and Vietnam’s Development in Comparative Perspective}, National Center for Social Sciences and Humanities, Hanoi, 212-221.}


\textit{8 See generally Ho Vu, 1998 ‘Hoi Nghi Trung Uong va Cuoc Khung Hoang Trong Khu Vu’ (Central Committee’s Conference and the Regional Crisis) \textit{Tap Chi Cong San} (11) 20; Pham Duc Thanh, 2001, ‘The Economic, Social and Cultural Impacts of Globalisation on Vietnam’ \textit{Vietnam’s Socio-Economic Development} (28) 36–42.}

\textit{9 Nguyen Tran Bat, 2002 ‘Culture in Recognition of its Value’, Essays, unpublished papers, Hanoi, 1-7.}


spoke of a ‘new culture’ (van hoa moi), by the 1960s this had transformed into ‘mass culture’ (van hoa quan chung) and later still the term ‘socialist culture’ (van hoa xa hoi chu nghia) came into use.

Contemporary writings about the ‘Great Unity’ focus on the potential for ‘global’ culture, spread by foreign trade, media, Internet communications, cinema and tourism, to erode confidence in local traditions.\(^{12}\) Borrowed cultural elements are portrayed as tainting or disrupting ‘core’ Vietnamese values. For example, foreign ideas are blamed for alienating the young from Vietnamese culture, causing them to lose their roots (mat goc) and breeding individualism and consumerism.\(^{13}\) Party resolutions echo these concerns: ‘the market economy, with its tremendous spontaneous power, has encouraged individualism and made the people attach importance to individual interests while forgetting the interests of the community.’\(^{14}\)

Rather than assessing cultural imports according to their capacity to benefit society, this nationalistic narrative uses politically determined criteria to guide cultural borrowing. As the nation’s moral guardians, party theorists select and promote core political and moral ideas that ‘protect the “beautiful traditions” (truyen thong tot dep) and values of the country’.\(^{15}\) The central concern is that ‘internal factors must have the leading role in directing the relations with and deciding the choice of external factors.’\(^{16}\) From this ‘reality’ technological borrowing appears to be culturally neutral and thus beneficial. Imported norms and institutional structures that may change ‘core’ domestic values are demonised as ‘peaceful evolution’ (dien bien hoa binh)—foreign forces that undermine party and state authority.

Borrowing from traditional laws

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15 See Nguyen Duy Quy, 2003 ‘Phan Dau Vi Mot Nen Van Hoa Viet Nam Tien Tien Dan Da Ban Sac Dan Toc’ (Striving for a Vietnamese Culture that is Advanced and Profoundly Infused with National Identity), *Tap Chi Cong San* (7), 12-14; Le Kha Phieu, 1998 *supra* 1, 5.

16 Pham Duc Thanh, 2001 *supra* 42; Pham Duc Thanh, 2000 *supra* 219–221.
The themes running through cultural discourse informed a research project conducted by the Legal Research Institute (Vien Nghien Cuu Khoa Hoc Phap Ly), a body attached to the Ministry of Justice. Their search for culturally appropriate legal norms was strongly influenced by the ‘Asian values’ thesis that nation states can withstand ‘negative’ global pressures, maintain social stability and preserve elite power by asserting core ‘traditional’, mainly Confucian, moral values. The anti-Western bias evident in the ‘Asian Values’ discourse promoted by Singapore’s Lee Kuan Yew and Malaysia’s Mohamad Mahathir was not as strident in Vietnam, perhaps from concern that it might inadvertently discredit the European roots of Marxist-Leninism. Nevertheless, research conducted by the Legal Research Institute proceeded on the presumption that ‘East Asian’ cultural values produce laws with beneficial economic and social outcomes.

Researchers plundered Vietnam’s pre-modern imperial codes searching for quintessential Vietnamese-Confucian laws. But in treating pre-modern legal norms as autonomous regulatory instruments, they detached these rules from the social, economic and cultural context that gave them meaning. Traditional preference for non-adversarial dispute resolution, for example, was attributed to an autochthonous communalism that discouraged ‘individuality’ and the ‘self’. Pre-modern political and economic constraints on court-based adjudication were ignored.

Researchers also employed a dubious methodology that used prevailing cultural values to assess the contemporary utility of pre-modern legal norms. For example, commentators imagined the early Le Dynasty as a golden age of political-legal innovation during which indigenous commercial practices crystallised into legally...

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17 The project was initiated by the Minister of Justice, Nguyen Dinh Loc, to overcome some of the problems experienced by drafting committees in reconciling borrowed law with Vietnamese conditions. Interview, Duong Thi Thanh Mai, Deputy Director of the Institute of Law Research, Ministry of Justice, Hanoi, March 1999. For a summary of views about the putative links between culture and economic development see Hoang Trinh, 1995 supra 212-223.


20 See e. g. Dao Bao Ngoc, 1999 ‘Regional Integration in Asia: From the Perspective of the Interaction between Legal Culture and Legal Regimes’ Nha Nuoc va Phap Luat (7) 30, 32-35.

21 Vietnam Law and Legal Forum have published monthly articles about traditional and colonial law in Vietnam since 1995. For a discussion about the methodology used in the project see Dao Tri Uc, 1995 ‘The Study of Vietnam’s State History and Law’ 1 Vietnam Law and Legal Forum (8) 38, 38-40.
enforceable rights. This construction misconstrued the stated purpose of the Le Code, which was to reproduce an imported Chinese social order (tam cuong). To Confucian-trained mandarins close textual readings made limited sense, since legal meaning resided primarily in moral teachings. Appeals to the letter of the law implied a disregard for morality or, worse, moral weakness. Commercial provisions in the Le Code primarily served a public law function—to preserve village harmony—and were never intended to confer horizontally enforceable private rights.

Despite voluminous writings, researchers failed to find meaningful ways of importing traditional norms (duc tri) and laws (phap tri) based on pre-industrial village life into a legal system serving an educated, internationally integrated mixed-market society. The project provided legislative drafters with insufficient contextual information to ascertain whether pre-modern Vietnamese norms and laws could regulate contemporary life. It nevertheless created a general impression that laws in East Asian countries are more compatible with Vietnamese conditions than Western laws. Some legal commentators are clearly influenced by this work and now speculate that ‘Confucian values and faith’ may augment and strengthen imported law.

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**Technical legal discourse**


23 Neo-Confucian morality aimed to penalise moral infractions of neo-Confusion morals, it calibrated penalties according to the social and kinship status of wrongdoers and made family heads liable for family crimes. See John Whitmore, 1984 ‘Social Organisation and Confucian Thought in Vietnam’ 15 Journal of Southeast Asian Studies 296, 305.


25 Interviews Bui Thi Mai Lan, Department of Civil Law, member of Civil Law Drafting Committee, Ministry of Justice, Hanoi, March, April, 1999. It should be noted that foreign researchers have shown that a wide gap existed between imperial ideology, including laws, and socio-economic practice during pre-colonial Vietnam. See Nola Cooke and Li Tana, eds., 2004, Water Frontier: Commerce and the Chinese in the Lower Mekong Regions, 1750-1880, Rowman and Littlefield, Lanham.
Hoang The Lien, in his comparative study of legal capacity in European and Vietnamese Civil Codes, provides a typical example of this type of writing. He examined the surface text of the legal codes without engaging underlying legal doctrines, much less the political, economic and moral discourses shaping legal preferences. For instance, he compared the legal capacity of companies by examining differences in legal texts, without explaining how these provisions were interpreted in profoundly different legal systems and political economies.

Underlying this unreflective approach to legal borrowing is the concern that independent research may offend party political directives. As Hoang The Lien explained, the ‘objective of jurisprudential research is: to build a scientific and practical base for the implementation of the Resolutions of the Ninth Congress of the Party.’

Ironically, party resolutions promoting international economic integration discourage lawmakers from questioning the social and economic utility of borrowing capitalist laws.

The Legal Needs Assessment (LNA) project also followed the technical legal approach, but its was more obviously politically guided. The Ministry of Justice commissioned four research teams to assess the utility of Vietnamese laws and legal institutions according to their capacity to realise the socioeconomic strategies adopted by the Ninth Party Congress in 2001. Researchers disregarded economic evidence that internal economic integration produces inequitable outcomes and political concerns that legal imports erode ‘core’ Vietnamese cultural values (see chapter three). The Final Report of the Legal Needs Assessment (LNA) unequivocally concluded:

The concept of proactive international economic integration must be instilled in the development and completion of the legal system of Vietnam in all fields, from lawmaking and implementation, to legal education and dissemination. Vietnam’s legal system should not only reflect the specific

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features of this country, but also must meet international standards in order to
be able to help Vietnam perform her international commitments based on the
principles of national independence, self-determination and socialist
orientation.  

Although the report gave ritualistic acknowledgment to the time-honoured ‘principles of
national independence, self-determination and socialist orientation’, it did not attempt to
reconcile foreign legal imports with local conditions. To do so might have been
construed as opposing party policy on international economic integration. It was
politically prudent to treat international legal harmonisation unreflectively as an
exercise in technical borrowing between legal systems. In the ‘official discourse’
imported laws were considered autonomous fragments that had de-coupled from their
social moorings and could thus transfer easily across political, economic, moral and
cultural boundaries. Unofficially, many participants in the project thought that foreign
laws were cultural artifacts that required careful adaptation to avoid disrupting domestic
values and practices.

Adapting Marxist-Leninist thinking

Socialist law has been so successfully inculcated by party policy, university and
professional training courses and workplace practices that many Vietnamese legal
officials treat class-based law as indigenous thinking.  

Recycling the decades-old
notion that Vietnam belongs to an international socialist family (gia dinh xa hoi chu
nghia), many legal officials believe that Soviet law is compatible with Vietnamese
precepts because it originated from a similar ‘political system’ (he thong chinh tri).

30 The four socioeconomic strategies are: establish a rule of law socialist state; develop a legal system that
supports a market economy with a socialist orientation; improve ‘democratisation’ and reduce poverty;
and actively engage international integration.
Bodies, Law Implementation and Enforcement, International Treaty Reception and Dispute Resolution’,
Hanoi, August, 25.
32 This observation is based on numerous interviews and discussions conducted by the author with
Vietnamese state and private lawyers since 1989. The Soviet legal thinking underpinning the curriculum
taught to law students also supports this contention. Fundamental studies in all undergraduate law schools
include: Marxist history of Philosophy, Marxist economic and political theory, theories of socialism and
the history of the CPV. Legal subjects include Marxist theories of state and law, histories of political-
legal theories and international legal development. For a representative discussion showing the Soviet
origins of the Vietnamese legal system see Le Honh Hanh, 1998 Giao Trinh Ly Luan Nha Nuoc va Phap
Luat, (Themes of State and Law), Nha Xuat Ban Cong An Nhan Dan, Hanoi, 320–326. Le Honh Hanh is
Vice-Director of the Hanoi Law University. Also see Mark Sidel, 1993 ‘Law Reform in Vietnam: The
Complex Transition from Socialism and Soviet Models in Legal Scholarship and Training’ 11 UCLA
Pacific Basin Law Journal (2) 221.
33 See e.g. Le Hong Hanh, supra 497–507.
Reasoning from a less theoretically sophisticated position, some commentators say that in the socialist family, the Soviet Union was considered the ‘elder brother’ and ‘family members’ followed what they were told. According to this account socialist laws entered an ‘empty house’ and became the dominant legal thinking.

In contrast, Vietnamese authorities for decades portrayed rights-based commercial laws as enemies of socialism. For this reason borrowing laws from capitalist systems required careful scrutiny. Following doi moi reforms, when the government began to moderate its antipathy to capitalist laws, some legal commentators sought to show that socialist legal theory is not incompatible with imported rights-based property norms.

Dao Tri Uc is the leading theorist in this area. His analysis starts with the Western comparative legal notion that borrowing among the world’s legal families requires lawmakers to consider three structural differences between legal systems:

- ‘legal resources’ (nguon luat) or substantive law
- the level of legal adjustment (nguon phuong phap dieu chinh) or the way law is used to govern social relationships
- the way the state orders legal relationships.

He also developed a methodology to guide lawmakers borrowing laws from outside the socialist world. In evaluating the contemporary relevance of the Le and Nguyen Imperial Codes, for example, he wrote ‘one should not jump to the conclusion that the first aspect [norms regulating public interests] is progressive and should be inherited, while the second aspect [laws preserving imperial privileges] is counter-progressive and therefore should not be inherited.’

Although he has departed from orthodox class-based theory, Dao Tri Uc has been careful to retain the instrumental role of law. Nevertheless this reformulation of orthodox Marxist-Leninism gives lawmakers a theoretical licence to borrow laws from capitalist countries.

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34 Speech by Duong Dang Hue, Deputy Director, Department of Civil Law, Ministry of Justice, delivered at a workshop on the United States-Vietnam Bilateral Trade Agreement, August 2002.
36 See Dao Tri Uc, 1995 supra 38-40.
37 Id. 39.
Le Minh Thong, another prominent legal commentator has filtered Kahn-Freund’s (or Kalm Jreund in Vietnamese) ideas through a Marxist prism to devise three factors that should be taken into account when importing foreign laws:

- Ensure that the spirit of the imported law is similar to the dominant (thong tri) legal ideology in the recipient country.
- Determine whether the imported law comes from a legal system that is similar in structure to the way state power is organised in the recipient country.
- Ensure that the imported legal system comports with the dominant production mode in the recipient country.

Unfortunately, Le Minh Thong did not further elaborate his ideas. But it is instructive to note that Kahn-Freund’s neo-Marxist ideas, such as ideology, power structures and production modes, have been highlighted in this narrative, whereas his socio-legal notions that link law to autonomous social processes have been de-emphasized.

Also drawing from external discourses, other theorists have attempted to expand the epistemological repertoire by increasing the narrow range of legal relationships recognised by orthodox Soviet legal taxonomies. Soviet theory received into Vietnam during the 1960s divided law into thirteen independent branches that fall within four general categories: state law, criminal law, administrative law and economic law. It treated law as an instrument to dieu chinh (adjust) social relationships. The state first classified ‘social relationships’ (quân xã hội) according to shared class characteristics and then enacted laws to regulate social relationships within predetermined ‘independent law branches’ (nghành luật đặc lập). Soviet legal taxonomies functioned well enough in a command economy, but now prevent Vietnamese lawmakers from thinking about market laws in conceptually coherent ways.

Soviet finance law taxonomies illustrate the problem. They were developed to classify financial transactions in a centrally planned economy and influence the way legal actors

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38 Le Minh Thong is a researcher at the Institute of State and Law. See Le Minh Thong, 2003 ‘Mot So Van De Phap Ly Cua Qua Trinh Toan Cau Hoa’ (Some Legal Issues on Globalisation) Tap Chi Nghien Cau Lap (1), 65-75.
40 The thirteen legal branches are: luật nhà nước (state apparatus); luật hành chính (administrative law); luật tài chính, (finance law); luật đất đai (land law); luật nông trang tap theo, (agricultural collective or cooperative law); luật dẫn sự, (civil law); luật hôn nhân gia đình, (family law); luật hình sự, (criminal law); luật to tung hình sự, (criminal procedure law); luật to tung dẫn sự, (civil procedure law); luật lao động, (labour law); luật lao động cai tao, (forcible correction labour law); luật quoc te, (international law). See Vu Duc Chieu, 1974 Phap Che La Gi? (What is Legality?) Nha Xuat Ban Pho Thong, Hanoi, 54–67.
thought about law. Tendering rules were considered public finance law, because money is paid from the state budget. A similar logic was used to maintain conceptual divisions between economic and civil contracts (discussed below). Lawmakers are accustomed to ‘classifying social relationship into small groups characterised by some common features’. They struggle to break free from taxonomic analysis and draft laws with universal legal norms.

Still others theorists use Ho Chi Minh’s eclectic blend of Western, Marxist-Leninist and pre-modern Vietnamese thinking as a ‘political umbrella’ to open legal discussions to ideas beyond the narrow parameters permitted by class-analysis. For example, they imported the notion that ‘equitable laws’ (cong bang cua phap luat) (literally the law’s equitability) must balance social interests to challenge the instrumental Soviet notion that law adjusts social relationships. As one writer put it, ‘law should be attached to politics but is not a servant of the state’. In other words, laws implement political policy, but are not ‘management tools’ (cong cu quan ly).

New theories blend Marxist thinking with Western concepts that stress linkages between law and culture, especially legal culture (van hoa phap ly). For example, some writers echo Durkheim’s ‘collective consciousness’—the notion that if society is an invisible moral environment surrounding individuals, then law is the visible manifestation of ‘community sentiment’ (tinh lang nghia xom). Though linking law and broader social forces, they are unwilling to repudiate the Marxist base-superstructure metaphor and embrace an alternative social theory that explores the interdependence between law and society. Without taking this final step, their

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41 Interview Bui Bich Lien, Lecturer, Hanoi Law University, Hanoi, March 2000.
42 See Duong Dang Hue, 2000 ‘Nhung Co So Cua Viec Xay Dung Phap Lenh Hop Dong Kinh Te (Sua Doi)’ (Foundation for Building Up Ordinance on Economic Contracts (Amendment)), Kien Nghiep Ve Xay Dung Phap Luat Hop Dong Kinh Te Tai Viet Nam, (Recommendations in Building up the Economic Contract Legislation in Vietnam), Ministry of Justice-UNDP VIE/95/017, Hanoi, 15.
44 Author Unknown, 1996 supra 115–116.
47 See e.g. Author Unknown 1996 supra 113–117; Le Minh Tam, 1998 Giao Trinh Ly Luan Nha Nuoc va Phap Luat (Themes of State and Law), Nha Xuat Ban Cong An Nhan Dan, (People’s Police Publishing House), Hanoi, 503.
theorising lacks the methodological tools lawmakers need to compare imported law with local cultural ‘realities’.

It also means that laws and legal obligations are still viewed through a collective framework. Individual legal rights are considered in negative terms, such as what harm can unconstrained rights cause to the collective good? This discourse is unresponsive to an imported ‘rule of law’ that gives individuals commercial rights that can constrain state action.

**Bypassing Marxist-Leninist thinking**

In contrast to the previous approaches, several commentators have bypassed Marxist-Leninism and applied Western sociological theory to legal borrowing. This subtle shift in thinking is revealed in as much by what is not said than by explicit arguments. These writers rarely mention Marxist-Leninist formulas and clearly separate political, economic, moral and legal arguments. Unfettered by the base-superstructure metaphor, they are free to conceptualise complex interactions between borrowed law and society.

Some German-trained academic lawyers use Weberian theory to argue that imported foreign commercial laws (du nhập luật kinh te nước ngoài) only induce desired behaviour where they are popular with the people (tình phổ thông), well defined (xác định ổn định), predictable (co the du doan trước) and transparent (tình rõ ràng). Laws that are incompatible with domestic laws, habits and ‘legal ideology’ (tu duy pháp lý), they argue, will not transplant successfully.

Pham Duy Nghia argued that many Western commercial legal norms introduced capitalist political and economic ideals that were incompatible with the small-scale family structures and sentimental bonds that characterise Vietnam’s ‘peasant legal culture’ (nên pháp lý nông dân). He illustrated this point with Articles 8 and 9 of the Commercial Law 1997, which imported Western unfair competition and consumer

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49 These precepts were borrowed from Nguyen Nhu Phat, director of KAS, a Hanoi based German funded legal development agency. Interviews Nguyen Nhu Phat, Director, Center for Comparative Law, Institute of State and Law, June 1998; Pham Duy Nghia, Lecturer, Law Faculty, National University, Hanoi September, 2000, March 2001. See Pham Duy Nghia, 2000, supra 11–13.

50 See Pham Duy Nghia, 2000 supra 17–20.
protection principles that functioned like *khau hieu* (political slogans) in Vietnam's highly state-directed economy. Nevertheless he contends that legal importation is the only practical means of rapidly enacting the commercial legal framework required for international economic integration. ‘Legal harmonisation’ (*hai hoa phap luat*) is a long-term project requiring the state to devote more resources to researching and reconciling imported precepts with local social conditions.
Annex Six

Vietnamese Relational Transactions

In chapter seven a link was made between domestic social and economic needs and pressure group support for imported commercial laws. This discussion explores this nexus by comparing the transactional matrix in which most domestic Vietnamese entrepreneurs conduct business with the norms underlying imported commercial laws. Recent research has identified a correlation between viable legal transfers and domestic need for particular types of regulation. A survey of law reform in six Asian economics concluded that imported commercial laws only moved from statutes into everyday life when the local economics developed a need for property and contractual rights. These finding suggest reasons why Vietnamese domestic entrepreneurs supported the market access provisions in the Enterprise Law, but were less enthusiastic about complex imported internal management rules. This section examines evidence that domestic demand is a critical factor shaping pressure group support for legal imports.

Relational transactions and production regimes

Kahn-Freund speculated that both economic and non-economic pressure groups, such as unions, employer associations, religious organizations, political parties and family structures, influence and/or contribute to the existence of law. He went on to hypothesize that laws transplant more readily into environments with similar economic and non-economic pressure groups (see chapter one). As stated in the third working postulate, imported laws are strongly conditioned by the institutional and normative structures ordering pressure groups.

Two institutional and normative structures are considered vital to the maintenance and support of imported commercial laws. Stuart Macaulay and Ian Macneil convincingly demonstrated that non-state relational connections shape the regulatory environment for Western corporations. They found that relational connections regulated internal

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arrangements between managers, shareholders and employees; market transactions with suppliers, distributors and purchasers.

We also saw in chapter one that 'production regimes' not only shape material products, but also subjective perceptions about the desirability and utility of economic and legal institutions. According to Michael Burawoy, production regimes are comprised of three main components: the role of the state, labor processes and the operation of market organisations. States play both an external regulatory and internal participatory role in production. In addition to laws, states use an array of non-legal regulatory instruments. For example, prior to the introduction of formal regulations in the early 1990s, informal meetings between City of London financiers and government officials pursuant to the London City Code on Takeovers and Mergers controlled corporate merges and acquisitions in London. Evidence suggests that as the voluntary nature of the Code was progressively eroded by legislation, corporate practices began to outwardly conform to the new statutory provisions. An inference drawn from this experience is that:

- modes of regulation—corporatist, market or bureaucratic—never exist in pure form in the real world. The practice of regulation is conditioned by a complex range of forces: the object of the activity, the administrative culture in which it occurs, the characteristic of the regulated...Actual modes of regulation are therefore hybrids.

Western regulatory modes are primarily market oriented. We have seen, however, that bureaucratic and state corporatist mechanisms are the primary modes of regulation in Vietnam. For example, state owned enterprises are treated as macro-economic levers to regulate prices and resources in the market place, while trade union and party cells established in companies directly influence commercial decision making. What matters for the third working postulate is whether legal transfers can negotiate differences in the regulatory modes in donor and host countries.

Burawoy informs us that the composition and operation of market support organisations in capitalist economies, such as advertising, insurance and real estate brokers, accountants and lawyers shape production regimes by reducing costs, supplying

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5 Id. Also see Peter Hall and David Soskice, 2000 Varieties of Capitalism: The Changes Facing Contemporary Political Economics, Cambridge University Press, Cambridge.
specialised skills and market information and supporting financial management. Although these institutions are rarely directly mentioned in market laws, their support is vital to the effective operation of property, contract and company laws.

In explaining the divergent forces shaping production in Japanese and American companies, Aoki showed that relational configurations were responsible, along with transplanted American Company laws and legal institutions, for determining the rules of the game. Comparative research examining the adoption of Japanese production methods in Europe have also demonstrated that ‘internal coalitions’ of forces such as ideology, bureaucratic control, information/skills, labour controls and political autonomy hold companies together more than state rules. If the operation of law depends on complementary production regimes, as this research suggests, then it is logical to assume that laws are most likely to successfully transplant among countries sharing compatible production regimes.

Research considered in this discussion suggests that relational contracting is especially important to Vietnamese entrepreneurs, because unlike their Western counterparts, they have only a partially functioning legal system to fall back on. Even where commercial laws protect commercial interests, court cases considered in chapter six demonstrated that the justice system is unpredictable and open to corruption. Research conducted by John McMillan and Christopher Woodruff implied that commercial relationships in Vietnam are formed with little awareness of litigation or legal rules. More recently, a study commissioned by the ADB found a correlation between levels of incorporation and a stable and predictable regulatory environment. Building on this work, the following discussion draws on interviews the author conducted with sixty private companies from March 2004 to March 2005. It argues that Vietnam currently lacks a

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10 See John McMillan and Christopher Woodruff, 1999 ‘Interfirm Relationships and Informal Credit in Vietnam’ 114 Quarterly Journal of Economics (4) 1285, 1286. Though differences between Western and Eastern approaches to law are presumably important constraining factors, company law flourishes in other East Asian states with sub-optimal legal systems. See Pistor and Wellons supra125-130.

11 Some of the interviews were conducted with the assistance of Vietnamese lawyers (N H Quang and Associates, Vision and Associates and Investconsult), others where conducted with the assistance of research assistants. Companies working in five industry sectors were selected (construction, wood-processing, commodity trading (copper wire), retail sales (car batteries), computer (sales and service).
uniform production regime that makes the complex internal management rules imported into the Enterprise Law (EL) relevant to domestic entrepreneurs.

**Summary of company survey**

<table>
<thead>
<tr>
<th>Industry sector</th>
<th>Reasons for incorporating</th>
<th>Internal management</th>
<th>Trading relationships</th>
<th>Industry associations</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Construction</strong></td>
<td>Required under state tendering rules.</td>
<td>Primarily reflects family structures and relational connections with SOEs involved in tendering transactions.</td>
<td>Personal connections and bribes to secure tendering information and connections with SOEs and tendering authorities.</td>
<td>The industry is too tightly linked with the state to benefit from independent associations</td>
</tr>
<tr>
<td><strong>Wood processing</strong></td>
<td>Required by local state officials. Avoid inspections by district level authorities.</td>
<td>Primarily reflects family structures.</td>
<td>Mutual benefit and sentimental connections. Price and quality were secondary.</td>
<td>Well developed associations to regulate market prices and control dealings with state authorities.</td>
</tr>
<tr>
<td><strong>Copper wire traders</strong></td>
<td>Required by state authorities. Uncommon in this sector.</td>
<td>Primarily reflects family structures.</td>
<td>Mutual benefit to secure markets with SOEs. But in a competitive urban market prices and quality are paramount.</td>
<td>Limited informal cooperation to control prices at the provincial level and mediate dealings with state authorities.</td>
</tr>
</tbody>
</table>

Studies concerning the construction industry and wood processing industry were conducted in Hanoi and surrounding provinces. The term company refers to enterprises under the Enterprise Law: sole proprietorships (*doanh nghiep tu nhan*), partnership companies (*cong ty hop danh*), limited liability companies (*cong ty trach nghiem huu han*), and joint stock companies (*cong ty co phan*).
<table>
<thead>
<tr>
<th>Battery traders</th>
<th>Required to obtain VAT receipts.</th>
<th>Primarily reflects family structures.</th>
<th>Price and territorial cartels strictly control trading relationships.</th>
<th>A highly organised and cohesive association maintains a trading cartel and resolves disputes.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Computer traders</td>
<td>Required to import computers and obtain VAT receipts.</td>
<td>Primarily reflects family structures, but approximately half of the companies surveyed had technical specialists in managerial positions.</td>
<td>Price controls loosely regulate tendering transactions with SOEs. Retail sector is highly competitive based on price and quality.</td>
<td>Commercial associations are formed to secure large tenders with SOEs, otherwise there loose associations to control prices.</td>
</tr>
</tbody>
</table>

**Limited liability**

Considered the cornerstone of Western corporate law, it is argued that limited liability (trach nhiem huu han) provisions in the EL convey few benefits to most Vietnamese entrepreneurs. Limited liability protection lacks commercial significance because creditors in Vietnam rarely sue to recover debts. We saw in chapter six that few private companies initiate economic law actions. On the rare occasions where this happens, judges manufacture reasons to lift the ‘corporate veil’ and make company officials and their relatives personally liable for company debts.12 Discretionary powers exercised by bankruptcy authorities overseeing creditor’s petitions also severely limit the usefulness of creditor petitions as a debt recovery vehicle.13 The Bankruptcy Law 2004 has removed some, but not all of these discretionary powers.

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12 When deciding whether relatives of those managing insolvent companies have received preferential payments, Asset Liquidation Teams apply article 135(2) of the Civil Code, which provides that where all things are equal, the interests of the weakest economic player (often employee creditors) should prevail. See Decree No. 189 CP Providing Guidance on the Implementation of the Law on Enterprise Bankruptcy 1994 article 32; Interview Nguyen Ngoc Phat, Director Center for Comparative Law, Institute of State and Law, June and July, 1998.

In this bureaucratic environment, company laws that insulate personal assets from corporate losses are neither intuitively appealing nor obvious to judges. This is especially true where debtors are state authorities or employees. The Western liberal presumption that the social cost of limited liability is counterbalanced by the ‘utility’ of entrepreneurial investment does not inform judicial thinking. The corporate veil consequentially lacks the legal and moral authority to quarantine shareholder and company officials from creditors.

Finally, limited liability does not protect investors against relational debt collection. Where intermediaries are unable to secure compliance, creditors use social pressure to shame debtors and their relatives into paying. As a last resort, police are paid by creditors to criminalise commercial debts and arrest debtors on fabricated charges. Evidently, quasi-criminal organisations are taking over this business as central authorities encourage police to stay out of commercial transactions.\textsuperscript{14}

\textbf{Internal management rules}

Ever since the publication of Berle and Means’ influential study about public corporation management, neo-classical scholars have postulated that the modern corporation is the optimal business organisation.\textsuperscript{15} Confidence in corporations has endured structural changes where a managerial elite running large public companies displaced individualist, entrepreneurial capitalists as the dominant, economic decision-makers.\textsuperscript{16} Though some commentators point to discrepancies between neoclassical corporation theory and economic reality, few doubt that the separation of ownership from professional managers is a central feature of Western corporate organisation.\textsuperscript{17}

The separation of management from capital was unknown in pre-colonial Vietnamese society.\textsuperscript{18} Case studies of early twentieth century companies show little change from traditional organisational structures. Vietnamese-owned ceramic manufacturers during the 1930s, for instance, exhibited few of the long-term (non-family) integrative

\textsuperscript{14} See McMillan and Woodruff, \textit{supra} 637-658.


\textsuperscript{18} See Nguyen Thi Doan and Do Minh Cuong, 1999 \textit{Triet Ly Kinh Doanh: Voi Quan Ly Doanh Nghiep} (The Business Philosophy of the Management of Enterprises) Nha Xuat Ban Chinh Tri Quoc Gia, Hanoi,
relationships found in Western corporate structures. With the exception of seasonal sub-contractors, firms were structured entirely along familial lines. Village relatives were hired in preference to strangers (non-relatives) and daughters were forbidden from marrying outside the village to protect technical knowledge and business secrets. Hierarchical kinship rules arose out of, and defined interlocking mutual obligations (family sentiment, secrecy and paternalism) that formed the building blocks of commercial organisations.

The company survey indicates that kinship structures have endured socialist and more recently, market forces and continue to bind private business organisations. Survey respondents used proverbs like gia đình la trien het (family first others second) to invoke a social ordering where close family connections formed the bonds generating dependable and trustworthy management structures. When external skills were required, family members turned first to family, and then friends from the same home village, or those with long standing personal ties. Recruitment was often based on common linkages through villages, workplaces, university classes, or military units. In each case, attempts were made to find sentimental attachments that replicated trung thanh (loyalty), tinh cam (sentiment towards others) and tin (trust) binding family members.

Research further suggests that domestic management structures differed from Berles and Means’ bifurcated ownership and management structures. Most internal company structures resembled family hierarchies, with the senior male family member assuming most managerial functions. There was some variation within each sector, but especially between sectors. For example, companies in the wood processing industry most closely resembled family hierarchies, while companies in the computer sales and service sector were closer to the corporate ideal. Respondents explained this difference in terms of labour specialisation. There are few skilled workers in the information technology sector, and company owners are compelled to recruit non-family members into

20 The family structure in Vietnam embodied elements blended from neo-Confucian, Buddhist, Taoist and animistic spirit cults. Though Buddhism and spirit cults ameliorated rigid neo-Confucianism, kinship power structures followed imported Confucian patterns. Hieu (filial piety) bound children to their parents through on (moral debt) and de (the relationship between brothers) required the eldest to ‘teach, nurture and protect’ and the younger brother to ‘respect, support and obey’ their elder sibling(s). See Neil L. Jamieson, 1993 Understanding Vietnam, University of California Press, Berkeley, 16-18; Hy Van Luong, 1989 ‘Vietnamese Kinship: Structural Principles and the Socialist Transformation in Northern Vietnam’ 48 Journal of Asian Studies. (4) 742, 748-49, 753-754.
management positions. But even in this sector, respondents said that they were training family members to replace non-family managers.

There were too few large companies (over 100 employees) in the survey to authoritatively show that internal management rules become more creditable when companies outgrow family structures and owners need to employ outside managers. The strategy adopted by the large companies surveyed was to send family members overseas for managerial training. Lawyers working the commercial arena also say there is no automatic demand for corporate laws when companies increase in size. But company laws become important when external trading partners or investors insist on clearly delineated internal management rules.

These findings corroborate research conducted by CIEM. This work found that entrepreneurs considered corporate rules separating family and corporate assets impediments to effective commercial organisation. It concluded there were few benefits and numerous disadvantages with legally differentiating family and company assets. Entrepreneurs admitted to withdrawing invested capital to repay personal loans and passing assets among themselves and their companies without regard for legal doctrines. Creative accounting designed to avoid taxation further blurred distinctions between family and company assets. Discrepancies between the way families internally manage their companies and imported corporate rules have been observed elsewhere in East Asia.

**Institutional factors influencing incorporation**

In addition to relational factors, the company survey showed that state institutional rules and practices strongly influence attitudes to corporate rules. In each sector respondents claimed that they were compelled to incorporate in order to obtain access to government contracts, import licences and VAT receipts. Some entrepreneurs were instructed to incorporate because they were considered to be too large to continue operating as

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household enterprises. Since 2004, it has been compulsory for firms with more than ten employees to incorporate.\textsuperscript{24}

The company survey showed that entrepreneurs in the construction, computer and copper wire industries could not function profitably without forming close relationships with state officials. The strategies used by entrepreneurs depended on the nature of state control over particular industries. For example, the construction industry is dominated by SOEs and most private companies require stable long-term relationships to gain supply contracts to participate in construction tendering. In contrast, private entrepreneurs have much greater control over the copper-wire market and can develop relationships with state officials on a case-by-case basis. Long-term relationships are cultivated with district-level officials in the locality where the businesses are situated to minimise state interference through over inspection and criminalisation. In this highly relational business environment incorporation conveys benefits and disadvantages that bear little relationship to those supposedly conveyed by corporate law.

<table>
<thead>
<tr>
<th>Summary of reasons for company incorporation</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Benefits</strong></td>
<td><strong>Costs</strong></td>
</tr>
<tr>
<td>- Right to legally access broader markets (i.e. trade beyond district)</td>
<td>- Greater registration costs</td>
</tr>
<tr>
<td>- Right to legally employ more than 10 workers</td>
<td>- Annual registration fee (\textit{thue mon bai})</td>
</tr>
<tr>
<td>- Stamp (\textit{chop}) for officiating transactions</td>
<td>- Requirement to have certified chief accountant</td>
</tr>
<tr>
<td>- Access to VAT receipts</td>
<td>- Increased restrictions due to labour contracts</td>
</tr>
<tr>
<td>- Right to set up branch establishments</td>
<td>- Some companies report an increased level of discretionary ‘management’ by local authorities</td>
</tr>
<tr>
<td>- Some companies report a more predictable relationship with government authorities</td>
<td>- Potential for increased taxes (with move from negotiated to standard tax calculations)</td>
</tr>
<tr>
<td>- Ability to access equity and debt capital</td>
<td>- Increased state reporting requirements</td>
</tr>
</tbody>
</table>

Further support for the survey findings is found in Vietnamese commentaries. Writers acknowledge that the command economy profoundly shaped attitudes ‘that resulted in anti-business philosophies in production and consumption, such as “do whatever you want, the state will be responsible” (\textit{cu lam da co Nha Nuoc chiu}).\textsuperscript{25} State domination

\textsuperscript{24} See Decree No. 109 Guiding Company Registration 2004.

\textsuperscript{25} Nguyen Thi Doan and Do Minh Cuong, 1999 \textit{supra} 99.
of the economy inculcated state regulators with moral mission to micro ‘manage’ private entrepreneurs (see chapter six). It also imbued entrepreneurs with the notion that the state is central to economic well-being. Thus businesses seek state benefits by forming relationships with state officials.

In sum, the reasons for incorporating overwhelmingly relate to state benefits given to corporate entities, rather than intrinsic benefits derived from the corporate form. In most cases considered similar outcomes could have been achieved if unincorporated entrepreneurs were given access to state benefits.

**Transformative potential for corporate change**

Neo-classical company theory predicts that as firms increase in size and market competition increases, separate management and ownership structures become more desirable. However, these views are based on corporate development in Western ideological and cultural settings and do not necessarily obtain in non-Western developing countries. Studies in Vietnam show that approximately two thirds of large companies employing more than one hundred workers are family owned and managed.\(^{26}\) Like small companies, they borrow capital from family and friends; less than ten percent is derived from long-term bank loans.\(^{27}\) A CIEM survey found that ‘trust’ is overwhelmingly the most important criterion used by informal lenders.\(^{28}\)

Collateral and third party guarantees are comparatively uncommon, but capital is in some cases also raised from informal tie-in arrangements with SOEs. The survey concluded that ‘the rules of the game in the informal credit market are more favorable and “more agreeable” than the rules in the formal one’.

Finally, most sales by private companies are made to customers belonging to business or family networks located in the same city, and frequently in the same neighborhood.\(^ {29}\) Taken together these factors imply that even large companies are constructed from, and primarily rely upon relational connections.

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\(^{26}\) From a total of approximately 26,000 companies each employing on average nineteen workers; only four hundred and fifty employ more than 100 workers. See Dang Phong, 1999 ‘The Private Sector: In Vietnamese Industry from 1945 to the Present’, in *Vietnam’s Undersized Engine: A Survey of 95 Larger Private Manufacturers*, MPDF Discussion Paper No. 9, 47.

\(^{27}\) Id. 50-51. A CIEM survey of private companies found that 54% borrowed from friends and relatives, the others borrowed from trading partners (informal business associations), employees, veteran and women’s associations and ‘huo ho’ credit circles. See Nguyen Dinh Tai, 2002 ‘Entrepreneurship in Vietnam and Promotion of the Private Sector: Some Judgements from a Survey’ *Vietnam Socio-Economic Development* (29) 25, 26-30.

\(^{28}\) Ibid.

\(^{29}\) McMillan and Woodruff, *supra* 1295-1296.
Informants report that occasionally separate legal personality is used as a moral, if not legal, means of quarantining family assets from non-family company managers. This occurs on the rare occasions where companies conduct business in provinces where family-owners lack personal contacts, or where founders commercialising scientific or technical knowledge require non-family business mangers.

At first glance these cases appear to support neo-classical theory, but deeper analysis discloses countervailing trends. Even as markets expand and local technology is commercialised, improved general educational levels (especially in finance and management) have reduced the need for non-family managers in manufacturing companies and, as a corollary, the need to separate management from capital ownership.\textsuperscript{30} More significantly, in some economic sectors incorporation has become less important as the market-economy matures.

Consider the clothing industry in Ho Chi Minh City. During the years immediately following the introduction of the CL many family-based clothing manufacturers incorporated. By 1998 the trend had reversed and reliance on company structures, both in terms of new incorporations and formal separation of capital and management, had declined.\textsuperscript{31} Informants believe that as the textile market grew in size and competitiveness, the capacity of state officials to influence commercial decision-making decreased. This in turn, meant that retired officials and others hired to constrain state economic management became less useful, and were eventually jettisoned. Released from the need to protect capital from non-family managers, corporate structures became less beneficial.

In summary, incorporation enables Vietnamese entrepreneurs to participate in state controlled monopolies, such as export quotas and construction tenders, but conveys few of the legal benefits enjoyed by Western entrepreneurs, such as limited liability and the separation of management from capital. Many local-level officials steeped in state economic management ideology are unprepared to defend the property and contractual rights that support the vital transformation that makes company law attractive to entrepreneurs. In addition, the special interest groups (such as lawyers, accountants, bankers, and insurers) that create the uniform, transparent markets presupposed by company law have not fully developed in Vietnam. As consequence, rather than structuring their businesses around company law principles, entrepreneurs form

defensive family arrangements and particularistic (frequently corrupt alliances) with state bureaucrats.\textsuperscript{32}

Conclusion

The invention of the legal person was law’s great contribution to Western capitalism. It created the legal fiction that a person with legal rights existed in what was in reality a network of communications between individuals. Our study suggests that in Vietnam there is currently little domestic demand for imported corporate rules. However, law has the capacity to create artificial and fictitious worlds that find solutions to commercial problems that do not exist in the real world. The reflective implementation of foreign corporate law has the potential to create legal fictions that provide flexible and imaginative solutions to domestic Vietnamese problems. But this is unlikely to happen until laws are brought into conversation with local relational practices.

\textsuperscript{31} In 1994 there were 383 licensed garment makers and after five-years of unprecedented growth in the garment industry there were 241 companies. See Liesbet Steer, 2000 ‘The Private Sector in Vietnam’, unpublished paper, Centre of International Economics, Hanoi, 8.

\textsuperscript{32} The rise and fall of the Minh Phung textile-empire illustrates the dangers of entrepreneurs using particularistic relationships to reduce risk. See Author Unknown, 1999 ‘Minh Phung and EpcO had the Risk of Going Bankrupt from their Establishment’ Saigon Giai Phong, 13 May, 1, 3.
Glossary of Vietnamese words

A. Personal and geographical names:

Áu Lạc
An Khánh
An Nam
An Thọ
Ba Đình
Cầu Giấy
Đường Dương Huệ
Đạo Duy Anh
Đạo Trí Úc
Dốc Mười
Dòng Sơn
Hà Nội
Hà Tây
Hà Văn Tái
Hải Phòng
Hồ Chí Minh
Hòn Bá
Hương Thế Liên
Huế
Hưng
Lê
Lê Duẩn
Lê Khả Phiêu
Lê Đăng Doanh
Lê Đức Thọ
Lê Quang Chiên
Lữ Văn Đạt
Lý
Mai Hữu Thục
Nam Cam
Nghĩa Tân
Nghĩa Tấn
Ngô Thị Nhâm
Ngô Văn Thấu
Nguyễn
Nguyễn Chí Lan
Nguyễn Hữu Thọ
Nguyễn Hữu Đăng
Nguyễn Khắc Viên
Nguyễn Kim Mạnh
Nguyễn Lân Dũng
Nguyễn Như Phát
Nguyễn Đình Lộc

Nguyễn Phú Trọng
Nguyễn Tấn Dũng
Nguyễn Thị Hoài Linh
Nguyễn Thị Lợi
Nguyễn Thị Nghĩa
Nguyễn Văn An
Nguyễn Văn Linh
Phạm Duy Nghĩa
Phạm Lộc
Phạm Thị Lan
Phạm Văn Bách
Phạm Văn Đồng
Phan Bởi Châu
Phan Chu Trinh
Phan Văn Khải
Phú Mỹ
Phú Mỹ Hưng
Tăng Minh Phung
Tạ Văn Thái
Thái Thắng Long
Thực An Dương Vương
Thụy
Tôn Kín
Từ Đức
Trần
Trần Hữu Huyên
Trần Xuân Trường
Trương Chinh
Trương Văn Cam
Văn Lang
Văn Phúc
Việt
Vĩnh Long
Võ Văn Kiệt
Vũ Oanh
Vũng Tàu
B. Other Vietnamese words and phrases:

An ninh kinh tế
Áo sơ mi luật công ty
Áp dụng pháp luật tương tự
Ban
Ban Cán sự Đảng
Ban Công tác Lập pháp
Ban Kinh tế Trung ương
Ban Nội chính Trung ương
Ban ơn, chiều cố
Ban quản lý thị trường
Ban Tổ chức Trung ương
Ban Văn hóa Thông tin
Bán quyển
Bàn面白 dân tộc
Báo lánh bằng tin chấp
Bề mặt
Bộ Chính trị
Bộ chủ quản
Bộ hình
Bộ luật
Bộ luật Hồng Đức
Bộ Luật sư
Bộ Tự pháp
Bộ Văn hóa Thông tin
Bôi đường
Bới thử nghiệm
Cẩn
Cập trên
Cầu lắc bờ
Cầu lắc bờ doanh nghiệp
Cà nhân
Cảnh sát
Cảnh sát kinh tế
Chấp thuận
Chi đậm chuyên môn
Chi thực
Chạy lợ thơ tắc
Chế độ chính sách
Chế tài
Chí công vở tư
Chi cực quản lý thị trưởng thành phố
Chính
Chính phủ
Chính sách

Chính sách chủ độ
Chủ nghĩa cá nhân
Chủ nghĩa dân tộc cực doan
Chủ nghĩa Mác-Lê Ninh
Chủ quyền nhân dân
Chủ tịch nước
Chuyên chính vô sản
Chuyên nghiệp
Co chế kinh tế
Co chế thị trưởng có sự hướng dẫn của
Nhà nước
Co chế thị trưởng theo định hướng Xã hội chủ nghĩa
Co chế xin cho
Cố phần hoá
Công bằng
Công bằng của pháp luật
Công cộng
Công cụ
Công cụ quản lý
Công tác tư pháp
Công tác xét xử
Công trình dân dụng
Công ty
Công ty cơ phân
Công ty ma
Công ty Mẹ-con
Công ty trách nhiệm hữu hạn
Công văn
Con người mới xã hội chủ nghĩa
Cố lòng tốt với dân
Cố thẻ doctrines trước
Cố thẻ làm những gì luật không cấm
Cố thẻ phụ thuộc về mặt chính trị
Cục Chính trị không quản
Dân biết, dân bàn, dân làm, dân kiểm tra
Dân chủ không có nghĩa là được làm tất cả những gì mình muốn
Dân chủ tần gọc
Dân chủ trực tiếp
Dân chủ Xã hội chủ nghĩa
Diễn biến hòa bình
Diễn đàn
Diễn đàn doanh nghiệp
Diễn đàn doanh nghiệp Việt Nam
Diễn đàn khu vực tư nhân
Dư luận
Độc
Được
Được luật
Được luật kinh tế nước ngoài
Đầu tư
Độc biệt
Đại diện
Đại hội Đảng toàn quốc
Đại học pháp luật
Đại học pháp lý
Đại đoàn kết
Đạo đức cách mạng
Đạo đức cách mạng
Đảng bộ hoặc Chi bộ
Đảng Công Sản Việt Nam
Đảng Lao Đông Việt Nam
Đảng lãnh đạo
Đảng lãnh đạo, Nhà nước quản lý, Nhân dân làm chủ
Đảng đoàn
Đảng đoàn Quốc hội
Đảng ủy
Điên hình
Diều chỉnh
Địa bàn
Đưa pháp luật vào cuộc sống
Địa phương
Địa phương chủ nghĩa
Độc lập
Đối mới
Đối quan lý thị trường
Đồng
Đồng Dương Công Sản Đảng
Đơn hoa kết trái
Đơn vị
Đường lối quản chúng
Đức tri
Gia đình Xã hội chủ nghĩa
Giây phép hành nghề
Giấy phép kinh doanh
Giải cấp thông trị
Giải tri
Giải tri chung
Giải tri sử dụng
Giải nghệ
Giáo dục
Giáo hội Phật giáo thống nhất
Gương mẫu
Hải đạo pháp luật
Hàng phẩm truyền Việt Nam
Hành động ngược lại
Hành vi
Hệ thống chính trị
Hội hội
Hội hội Công thương Thành phố Hồ Chí Minh
Hội hội kinh doanh
Hiệu
Hiệu quả
Hình phạt
Hình sự hoái động Bộ trưởng
Hội đồng Chính phủ
Hội nông dân
Hội đồng Dân chủ và Pháp luật
Hội đồng Kinh tế Xã hội
Hội đồng Kỷ mục
Hội đồng Nhân dân
Hội đồng Tiền chi
Hội đồng Tộc biết
Hội trưởng
Hơn nhân ngoại gia thú
Hồng huy chương
Hoà giải
Hoàn chỉnh
Hoàn thiện
Hoằng Việt luật lệ
Hoà don
Học thuyết Tam quyền phân lập
Học viễn Chính trị Quốc gia Hồ Chí Minh
Hợp lý
Hướng lệ
Hướng ước
Huyền
Ki luật nhà nước
Kế hoạch nhà nước
Khâu hiểu
Khế ước
Khoa học tổ chức
Khơi
Kiểm
Kiểm điểm
Kinh
Kỹ thuật
Lấy ý kiến nhân dân
Lạc Hồng
Lâm chủ taper thế
Lâm chủ taper thế Xã hội chủ nghĩa
Lâm luật
Lâm đơn thinh xin
Lê
Lê triều hinh luật
Liêm
Liên minh giữa giải cấp công nhân với
giải cấp nông dân và tăng lopol trị thực
Liên Việt
Lính hòn
Lợi ích của Nhà nước
Luật
Luật học
Luật mém
Luật tự nhiên
Lý
Lý lịch
Lý và tình trong việc chấp hành pháp luật
Mặt góc
Mặt trận dân tộc thống nhất
Mặt trận tổ quốc
Mối quan hệ tốt đẹp
Một bộ cải li không bằng một ti cải tinh
Một người làm quan cả họ được nhở
Mơ cựa
Nền kinh tế theo định hướng Xã hội chủ nghĩa có sự quản lí của Nhà nước Nên
kinh tế thị trường theo định hướng
Nên pháp lý nông dân
Ngành luật độc lập
Nghiệp vụ
Nghi định
Nghi quyết
Nghi quyết của Hội đồng Thành phủ
Nghĩa tインタ
Nghĩa tình đạo lý
Nghĩa vụ
Nghĩa vụ liên đới

Người mới giới
Người tiêu dùng
Ngữ luận
Nguyên luật
Nhân dân
Nhân dân lao động
Nhân thực giải cấp
Nhân trí
Nhất trí
Nhà không phép
Nhà nước của dân, do dân và vì dân
Nhà nước pháp quyền
Nhà nước pháp quyền Xã hội chủ nghĩa
Niềm tưởng
Nur văn điều nhạc của tương lai
Nhóm niềm vui tương chê doanh nghiệp
Như cầu xã hội
Niềm tin nơi tâm
Nôm
Ô dự
Phạm chánh chính trị
Phạm chánh đạo đức
Phần cách mạng
Phát vít
Phải tôn trọng và thực hiện pháp luật
Pháp chế
Pháp chế dân chủ
Pháp chế Xã hội chủ nghĩa
Pháp gia
Pháp lệnh
Pháp luật lấy ý chỉ chung của xã hội
Pháp luật là ý chỉ chung của xã hội
Pháp lý
Pháp trị
Phạt huy nội lực
Phề bình và tự phề bình
Phép vua thừa lể lăng
Phieu vẫn biết đại biểu
Phong Cánh Vọng Thị
Phương pháp điều chỉnh
Phương
Phương và xã
Quân
Quận tư
Quan hệ xã hội

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Quan điểm đúng dân
Quan viễn
Quả trình thực tại
Quân lý
Quân lý nhà nước
Quân lý để quán lý
Quân lý nhà nước về kinh tế
Quân lý nhà nước về pháp luật
Quân triệt
Quốc hội
Quốc ngộ
Quy định pháp luật và các chính sách chuyên đề
Quyền
Quyền lực công
Quyền sở hữu
Quyền sử dụng đất
Quyết định trước khi xét xử
Rõ ràng
Sao chép máy móc
Sài Gòn Tiếp thị
Sự can thiệp
Sự chứng thực
Sự lãnh đạo của Đảng
Sống trung trực thuộc
Số hưởng tập thể
Sức ép
Tâm
Tâm giao động nguyên
Tân dân chủ
Tập san Tư pháp
Tập thể quân chính nhân dân
Tập trung
Tập trung dân chủ
Tập trung quyền lực
Tăng cường thống nhất về chính trị và tình thần của toàn dân
Tình
Tập chí Cảnh sán
Tam cương
Tai sán Xã hội chủ nghĩa
Tế tướng
Tết
Tham gia
Thảo luận ở tổ
Thiện mệnh
Thiếu trách nhiệm
Thị trưởng không lành mạnh
Thị trưởng lành mạnh
Thống cảm
Thống nhất
Thống tư
Thống tư hướng dân
Thoá dăng
Thừa nhận pháp luật
Thời kỳ quá độ
Thương nhớ đồng quê
Thuê khoản
Thủ sĩ
Tình cảm
Tình chất cuộc chuyên
Tình dân tộc
Tình lang nghĩa xóm
Tình đảng cộng sản
Tình pháp lý trong việc tổ chức quyền lực nhà nước
Tình phổ thông
Tình rõ ràng
Tình yêu thương mai
Tình yêu thương mai
Tư duy pháp lý
Tư liệu sản xuất chủ yêu
Tư tưởng Hồ Chí Minh
Tồ chức cao bồi
Tồ dân phó
Tồ luật học
Tổng
Tổng Liên đoàn Lao động Việt Nam
Toà án bính
Toà án khu vực
Toà án nhân dân đặc biệt
Toà án nhân dân tối cao
Toà án quân sự
Toà phúc thẩm
Tích thu
Trái vự
Trồng nông mát thương
Trung mua
Trung thụ
Trung bản cổ nòng
Trung gian
Trung ương
Trung quân
Trùm chó
Truyện thông tốt đẹp
Tuần theo mệnh lệnh cấp trên
Uỷ thể
Uỷ tín
Uỷ ban
Uỷ ban Hành chính
Uỷ ban Nhân dân
Uỷ ban soạn thảo Hiến pháp
Uỷ ban Thẩm phán
Uỷ ban Trung ương
Uỷ ban xuất bản
Uỷ quyền
Vật đặc đỉnh
Văn hoá dân tộc
Văn hoá lao động
Văn hoá mới
Văn hoá pháp lý
Văn hoá quân chúng
Văn hoá Xã hội chủ nghĩa
Văn phòng
Vai trò lãnh đạo
Viện kiểm sát Nhân dân
Viện nghiên cứu Khoa học Pháp lý
Việt Minh
Vô cảm
Xã
Xã hội chủ nghĩa
Xã hội công dân
Xã hội cũ
Xã hội dân sự
Xã hội hoá
Xác định ồn ãnh
Xin ý kiến của lãnh đạo
Xử dân sự, xử thế nào cùng được
Xúc tiến thương mai
Yêu cầu chuyên môn
Ý chỉ của giai cấp thống trị
Ý chỉ tối thương
Ý thức pháp luật
Ý thức pháp luật Xã hội chủ nghĩa
Bibliography

Books, Reports and Unpublished Papers


Author Unknown, 1951 Cai Cach Ruong Dat O Cac Nuoc Dan Chu Nhan Dan, (Agrarian Reform in Democratic Republic Countries), Truth Publishing, No 5, Liberated Territory.


Author Unknown, 1981 Phap Che va Quyen Lam Chu Tap The (Legality and Collective Mastery Rights), Jointly Published Department Legality and Department of Cultural Information in Binh Tri Thien Province.

Author Unknown, 1996 ‘Nhung Van De Ly Luan Co Ban Ve Nha Nuoc va Phap Luat’ (Basic Theoretical Issues about State and Law), Nha Xuat Ban Chinh Tri Quoc Gia (National Political Publishing House), Hanoi.


Bao Cao Tong Ket Cong Tac Nganh Toa An va Phuong Huong Nhiem Vu Cong Tac Toa An (Supreme Court annul reports and plans), 1999-2004.

Barfield, Owen 1979 History, Gilt, and Habit, Wesleyan University Press, Middletown, Conn.


439


2002 The Internationalization of Palace Wars, University of Chicago Press, Chicago.


Dinh Gia Trinh, 1964 Nghien Cuu Nha Nuoc va Phap Quyen, (Studies about State and Legality), Nha Xuat Ban Su Hoc (Historical Studies Publishing House), Hanoi.

Dinh Van Que, 1999 Phap Luat Thuc Tien va An Le (Legal Practice and Precedent), Da Nang Publishing House.


Duong Dang Hue, 2000 ‘Nhung Co So Cua Viec Xay Dung Phap Lenh Hop Dong Kinh Te (Sua Doi)’ (Foundation for Building Up Ordinance on Economic Contracts (Amendment)), Kien Nghiep Ve Xay Dung Phap Luat Hop Dong Kinh Te Tai Viet Nam, (Recommendations in Building up the Economic Contract Legislation in Vietnam), Ministry of Justice-UNDP VIE/95/017, Hanoi.


Ha Lan, 1953 Tham Gia Phat Dong Quan Chung Cai Cach Ruong Dat Da Thay Doi Tu Tuong Toi, (Change in Mentality Brought About by Encouraging People to Participate in Land Reform), Nha Xuat Ban Su That, (Truth Publishing), Hanoi.

442


Hayek, F. A. 1944 The Road to Serfdom, University of Chicago Press, Chicago.


Institute of State and Law, 1998 Giao Trinh Ly Luan Nha Nuoc va Phap Luat (Themes on State and Law), Nha Xuat Ban Cong An Nhan Dan, Hanoi.

Insun Yu, 1990 Law and Society in 17th and 18th Century Vietnam, Asiatic Research Center, Korea University, Seoul.


Le Duan, 1978 *Phat Huy Quyen Lam Chu Tap The Xay Dung Nha Nuoc Vung Manh* (Develop the Rights of Collective Mastery Build a Strong State), Nha Xuat Ban Su That, Hanoi.
1979 *Nhan Dan Lao Dong Lam Chu Tap The la Sue Manh, la Luc Day Cuu Chuyen Chinh Vo San* (The Labouring People Hold Collective Mastery which is the Force Driving Proletarian Dictatorship), Speech given by Le Duan, Hanoi, 2 April, 1979.
Le Hong Hang, 1998 *Giao Trinh Ly Luan Nha Nuoc va Phap Luat* (Text Book on State and Law), Nha Xuat Ban Cong An Nhan Dan, (People’s Police Publishing House), Hanoi.
Legal Research Institute, 1999 *Mot So Van Ve Phap Luat Dan Su Viet Nam Tu The Ky 13 Den Thoi Phap Thoic*, (Some Issues about Civil Vietnamese Law Since the 15th Century until French Colonization), Vien Khoa Phap Ly (Legal Research Institute), Hanoi.


Lindsey, Tim and Howard Dick eds., 2002 Corruption in Asia: Rethinking the Governance Paradigm, Federation Press, Sydney.


Lukas, John 2002 At the End of an Age, Yale University Press, New Haven.


MacIntyre, Andrew 1990 Business and Politics in Indonesia, Allen and Unwin, Sydney.


Mallon, Raymond 2002 'Approaches to Support the Development of an Enabling Environment for Small Enterprises: Viet Nam Case Study', GTZ Report to the Committee of Donor Agencies for Small Enterprise, Turin.


Marr, David and A. C. Milner eds., 1986 Southeast Asia in the 9th and 14th Centuries, Institute of Southeast Asian Studies, Singapore.


McCracken, Sheelah and Anna Everett, 2004 Banking and Financial Institutions Law, Lawbook Co. Sydney


445
1997 Comparing Legal Cultures, Dartmouth, Aldershot.
Ng Tee Yen et. al. eds., State Owned Enterprise Reform in Vietnam Singapore, Institute of South East Asian Studies, 19.
Ngo Van Thau, 1982 Tim Hieu ve Nha Nuoc (Studies about State and Law), Nha Xuat Ban Phap Ly (Law Publishing), Hanoi.
Nguyen Khanh Toan, 1964 ‘Nha Nuoc Phap Quyen Xa Hoi Cha Nghia va Cong Tac Nghien Cuu Luat Hoc’ (Socialist Law Based State and Legal Research) in Nghien Cuu Nha Nuoc va phap quyen (Studies about State and Legality), Nha Xuat Ban Su That, Hanoi.


Nguyen Van Thao, 2001 ‘Ve Kiem Tra Tinh Hop Hien Hop Phap Cua Van Ban Phap Luat va Cac Co Quan Tu Phap’ (Checking Constitutional Compliance and the Legitimacy of Legal Documents and the Activities of Judicial Bodies) Bao Khoa Hoc va Phat Trien, September, republished on the National Assembly Webpages.


Office of Government, 2003 ‘Study Report to Improve the Quality of Law and Ordinances Drafted by the Government to be Submitted to the NA and NA Standing Committee’, unpublished report, Working Delegation No. 804, Hanoi


Petersen, Hanne and Henrik Zahle eds., 1995 Legal Polycentricity: Consequences of Pluralism in Law, Dartmouth, Aldershot.


Pham Van Bach, 1994 ‘Cong Tac Nghien Cuu Luat Hoc’ (Law Research Activities), in Nghien Cuu Nha Nuoc va Phap Quyen (Studies about State and Legality), Truth Publishing Hanoi.

Pham Van Dong, 1952 May Van De Cot Yeu cua Chinh Quyen Dan Chu Nhan Dan Viet Nam, (Some Crucial Aspects of the People’s Democratic Regime in Viet Nam) Ban Chap Hanh Trung Uong, (Party Central Committee Publishing) Hanoi.


Phung Minh, 1998, 40 Nam Quan Ly Nha Cua O Ha Noi, (40 Year of Housing Management in Hanoi) unpublished monograph, Hanoi.


Podgorecki, A et. al. eds. 1973 Knowledge and Opinion About Law, M. Robertson, London.


Ta Van Tai, 1988 The Vietnamese Tradition of Human Rights, Institute of East Asian Studies, University of California, Berkeley.


Thayer, Carlyle and David Marr eds., 1993 Vietnam and the Rule of Law, Australian National University, Political and Social Change Monograph No. 19, Canberra.


Tomasic, Roman ed. 1999 Company Law in East Asia, Ashgate, Aldershot UK.

Tran Hieu, 1971 25 Nam Xay Dung Nen Phap Che Viet Nam, (25 Years of Building Vietnamese Legality), Nha Xuat Ban Lao Dong, Hanoi.


Tran Quang Huy, 2001 Giao Trinh Luat Dat Dai (Land Law Text Book), Nha Xuat Ban Cong An Nhan Dan, Hanoi.


Vien Nghien Cuan Quan Ly Kinh Te Trung Uong (Central Institute of Economic Management), 1998 Danh gia Tong Ket Luat Cong Ly va Kien Nghiep Nghinh Huong Suu Doi Chu Yeu (Review of the Current Company Law and Key Recommendations for its Revision), Hanoi, January.


Vo Chi Cong, 2002 ‘Thay Gi Ve Cong Tac To Chuc va Quan Ly Can Bo Qua Vu An Truong Van Cam’ (What can be Seen About Organising and Managing Cadres Through the Truong Van Cam Affair) Tap Chi Cong San (9) <www.taphichongsan.org.vn>.


Vu Khieu, 2000 'Vietnam vis-à-vis Asian and European Values', in Asian Values and Vietnam's Development in Comparative Perspectives, National Center for Social Sciences and Humanities, Hanoi.
Wendell Holmes, Oliver 1881 The Common Law, Little, Brown and Co, Boston.

Journal Articles
Adams, John and Nancy Hancock, 1970 ‘Land and Economy in Traditional Vietnam’ 1 Journal of Southeast Asian Studies (2) 90.
Author Unknown, 1957 ‘Sinh Hoat Dan Chu Cua Nhan Dan Ta Ngay Cang Phat Trien’ (Democratic Activities of Our People have been More Developed) Hoc Tap (9) 1.
Bui Ngoc Son, 2003 ‘Su Doc Lap Cua Toa An Trong Nha Nuoc Phap Quyen’ (Independence of the Court and the Rule of Law) Tap Chi Nghien Cua Lap Phap (4) 43.
Carother, Thomas 1998 ‘The Rule of Law Revival’ 77 Foreign Affairs (2) 95.


Dang Dinh Phu, 1999 ‘Bac Ho Noi Ve Dan Chu Tap Trung’ (Uncle Ho Talks About Democratic Centralism) Tap Chi Cong San (8) 28.


Dao Bao Ngoc, 1999 ‘Regional Integration in Asia: From the Perspective of the Interaction between Legal Culture and Legal Regimes’ Nha Nuoc va Phap Luat (7) 30.


1999 ‘The Principle of Legality and Its Presentation in the Criminal Code of Vietnam’ Tap Chi Cong San (8) 40

2001 ‘Mot So Quan Diem Co Ban Ve Sua Doi Bo Sung Mot So Dieu Cua Hien Phap 1992’ (Key Points of View on Amendment, Addition to the 1992 Constitution) Nha Nuoc va Phap Luat (9) 6.

2001 ‘Ve Nhu Cau, Muc Do Sua Doi Hien Phap Nam 1992 va Quan Diem Xay Dung Nha Nuoc Phap Quyen, (The Needs, the Scope of Revising the 1992 Constitution and the Concept of Law-Based State) Tap Chi Cong San (10) 21.

2001 ‘Xay Dung Nha Nuoc Phap Quyen xa Hoi Chu Nghia Duoi Su Lanh Dao Cua Dang’ (Building Up the Law-Based-Stage Under the Leadership of the Communist Party) Nha Nuoc va Phap Luat (7) 3.

2002 ‘Tac Dong Cua Toan Cau Hoa Doi Voi Su Phat Trien va Doi Moi Cua Phap Luat Viet Nam’ (Affect of Globalisation Towards the Development and Renovation of Vietnam’s Laws) Tap Chi Cong San (12) 22.


Dinh Gia Trinh, 1961 ‘May Y Kien Dong Gop Ve Van De Bao Ve Phap Che’ (Some Opinions on the Protection of Legality) Tap San Tu Phap (3) 20.


Dinh Ngoc Vuong, 2001 ‘Van De Sua Doi Bo Sung Quy Dinh Cua Hien Phap 1992 Ve Ky Ket Quyet Dinh Viec Phe Chuan Gia Nhap Bai Bo Dieu Uoc Quoc Te’ (Problem of Amending and Adding

453
Stipulations to the 1992 Constitution on Signing, and Deciding to Ratify and Abrogate International Treaties) Nha Nuoc va Phap Luat (9) 43.


Dinh Xuan Lam, 1990 ‘Book Review’ Vietnam Social Sciences (2) 89.


Do Muoi, 1992 ‘Xay Dung Nha Nuoc Phap Quyen Thuc Su Cua Dan, Do Dan Va Vi Dan’ (Building up a Law-based State that is Of the People, By the People and For the People) Tap Chi Cong San (10) 3.

1995 ‘Building and Perfecting the State’ 1 Vietnam Law and Legal Forum (6) 3.

1998 ‘Developing the People’s Right to Mastery at the Grassroots Level’, Tap Chi Cong San (20) 3.


Do Thai Dong, 1993 ‘Modifications of the Traditional Family in the South of Vietnam’ 3 Vietnam Social Sciences 77.


Doan Nang, 2002 ‘Xu Ly Dung Dan Moi Quan He Giua Phap Luat Quoc Te va Phap Luat Quoc Gia’ (Correct Settlement of the Relationship between International and National Law) Tap Chi Nghien Cua Lap Phap (5 & 6) 6.


Editors, 1961 ‘To Understand Clearly the Functions and Characteristics of People’s Courts in Order to Implement the New Philosophy of the Spring Rectification Campaign’ Tap San Tu Phap (4) 1.


1986 ‘The Unimplementability of Policy and the Notion of Law in Vietnamese Communist Thought’, Southeast Asian Journal of Social Science (1) 60.


Friedman, Lawrence 1969 ‘Legal Culture and Social Development’ Law and Society 29.


Gray, Michael 1999 ‘Creating Civil Society? The Emergence of a NGOs in Vietnam’ 30 Development and Change (4) 693.


Ho Vu, 1998 ‘Hoi Nghii Trung Uong va Cuoc Khung Hoang Trong Khu Vuc’ (Central Committee’s Conference and the Regional Crisis) Tap Chi Cong San (11) 20.

Hoang Hao, 1987 Phap Luat va Kinh Te (Law and Economy) Tap Chi Cong San (12), 24.

Hoang Ngoc Hien, 1993 ‘The Power of Culture and the Development of Civilization (The Case of Vietnam)’ 6 Viet Nam Generation (3–4) 133


Hoang The Lien, 1993 ‘On the Model of an Economic Court in Vietnam’ Nha Nuoc va Phap Luat (2) 19.

Forum (79) 13.

Hoang Thi Chau, 1967 ‘Understanding “Phu Dao” in the Hung Vuong Legend’ 9 Historical Studies
Review 22.

Hoang Thi Kim Que, 1999 ‘Mot So Suy Nghie ve Moi Quan He Giua Phap Luat va Dao Duc Trong He
Thong Dieu Chinh Xa Hoi’ (Some Thoughts on the Relationship between the Law and Ethics in the
Social Regulatory System) Nha Nuoc va Phap Luat (7) 16

Hoang Trung, 2002 ‘Pham Tru Trung—Hieu Trong Triet Ly Phuong Dong va Tu Tuong Ho Chi Minh
Voi Van De Giao Duc Da Duc Cach Mang Hien Nay’ (The Notion of Loyalty—Piety in the
Oriental Philosophy and Ho Chi Minh’s Ideas about the Current Problem of Morality Education)
Tap Chi Cong San (9) 18.

Hoang Van Nghia, 2003 ‘Dan Chu va Viec Hien Quyen Dan Chu’ (Democracy and the Right to
Implement Democracy’ Tap Chi Nghien Cau Luat Phap (1) 106.

Honey, P. J. 1960, ‘North Viet Nam’s Party Congress’ China Quarterly (4) (October-December), 66.
1962 ‘The Position of the DRV Leadership and the Succession to Ho Chi Minh’ 9 China
Quarterly (January-March) 24.

Horn, Norbert 1991 ‘The Lawful German Revolution: Privatization and Market Economy in a Re-Unified
Germany’ 39 American Journal of Comparative Law 725.

Hunt, Alan 1985 ‘The Ideology of Law: Advances and Problems in Recent Applications of Ideology to
the Analysis of Law’ 19 Law and Society Review (1) 11.

ICP, 1930 ‘Political Theses of the Indochinese Communist Party’ October 1930, reproduced in 1970,
Vietnam Studies (24) 183.

Ireland, P. et. al., 1987 ‘The Conceptual Foundations of Modern Company Law’ 14 Journal of Law and
Society 149.

Review 1647.

Jayasuriya, Kanishka 1999 ‘The Rule of Law and Governance in the East Asian State’ 1 The Australian
Journal of Asian Law (2) 107.


Jones, Carol 1994 ‘Capitalism, Globalisation and Rule of Law: An Alternative Trajectory of Legal
Change in China’, 3 Social and Legal Studies 195.


Kerkvliet, Benedict J. Tria 1995 ‘Village State Relations in Vietnam: The Effect of Everyday Politics on
Decollectivization’ 54 Journal of Asian Studies (2) 402.


Khanh Van, 2002 ‘Phai Khac Phuc Khuyen Dien’ (Shortcomings Must be Made Good) Tap Chi Nghien
Cau Lap Phap (12) 5.

2003 ‘Cai Cach Tu Phap: Nhin Tu Nhieu Goc Do’ (Judicial Reform: From Different Angles) Tap
Chi Nghien Cau Lap Phap (4) 3.

and Legal Forum (65) 18.


Kim, Annette 2004 ‘A Market Without the ‘Right’ Property Rights: Ho Chi Minh City, Vietnam’s Newly
Emerged Private Real Estate Market’ 12 Economics of Transition (2) 275.


Koh, David 2001 ‘The Politics of a Divided Party and Parkinson’s State in Vietnam’ 23 Contemporary
Southeast Asia (3) 533.

Lam Nguyen, 2002 ‘Procedures-Observations from a National Assembly Session’ Legislative Studies
Journal (8) 12.

Comparative Analysis 13 Hastings International and Comparative Law Review 142.

Alternative to Contract Law’ 10 Journal of Legal Studies 349.

Landes, Elizabeth and Richard A. Posner, 1978 ‘The Economics of the Baby Shortage’ 7 Journal of
Legal Studies 323.

Lawton, Phillip 1996 ‘Berle and Means, Corporate Governance and the Chinese Firm’ 16 Australian
Journal of Corporate Law (3) 348.

456
Le Cam, 2002 ‘Cai Cach He Thong Toa An Trong Giai Doan Xay Dung Nha Nuoc Phap Quyen Viet Nam’ (Reform the Court System to Build Up a Law Based State in Vietnam) Tap Chi Nghien Cuu Lap Phap (4) 21.


Le Duy Vau, 1956 ‘The Nao La Phat Huy Tap The va Dan Chu Dung Muc?’ (How to Satisfactorily Expand Collectivity and Democracy?) Hoc Tap (2) 70.


Le Minh Thong, 2003 ‘Mot So Van De Phap Ly Cua Qua Trinh Toan Cau Hoa’ (Some Legal Issues on Globalisation) Tap Chi Nghien Cuu Lap (1) 65.

Le Quang Thuong, 1996 ‘Mot So Van De Ve Cong Tac Dan Van Trong Tinh Hinh Hien Nay’, (Several Problems Concerning Cadre Work Under the Current Situation) Tap Chi Cong San (14) July, 18.

Le Tat Chien, 2001 ‘Major Amendments and Supplements to the Government’s Decrees No. 63 CP on Industrial Property’ 7 Vietnam Law and Legal Forum (80) 16.

Le Thi, 1977 ‘Create a Correct Relationship between the Collective and the Individual in the Socialist System’ Tap Chi Cong San (8) 54.

Le Trung Ha, 1965 ‘Chuyen Huong To Chuc Cua Cac Toa An Nhan Dan Dia Phuong De Dap Ung Voi Tinh Hinh va Nhiem Vu Moi’ (Changes in Local Court to Meet the Requirements of the New Conditions and Requirements) Tap San Tu Phap (8) 1.


Le Van Luong, 1960 ‘Bang Cuong Che Do Tap Trung Dan Chu Trong Dang Ta’ (Strengthening the Democratic Centralism in Our Party) Hoc Tap (6) 27.


1997 ‘Against a European Civil Code’ 60 Modern Law Review 44.

Lesnoi, V. M. 1961 ‘Phap Che Xa Hoi Chu Nghia Xo Viet’, (Soviet Socialist Legality) Tap San Tu Phap (4) 30.

Lesnoi, V M 1961 ‘Viec Bao Dam Phap Che Xa Hoi Chu Nghia’ (Ensuring Socialist Legality), Tap San Tu Phap (11) 45.


Mai Hai Oanh, 2004 ‘An Ninh Van Hoa Trong Toan Cau Hoa’ (Cultural Safety in Globalisation) Tap Chi Cong San (2) 49.


Ngo Duc Manh, 1994 ‘Some Thoughts on the Legislation by the National Assembly’ *Nha Nuoc va Phap Luat* (4) 8.


Ngo Huy Cuong, 2001 ‘Luat Hien Phap va Van Hoa Chinh Trich’ (Constitutional Law and Political Culture) *Tap Chi Nguyen Cuu Lap Phap* (1) 29


Nguyen Chi My, 1989 ‘Chu Nghia Ca Nhuan va Cuoc Dau Tranh De Khac Phuc No’ (Individualism and the Struggle Against It) *Tap Chi Cong San* (6), 36.

Nguyen Cuu Viet, 1997 ‘Nhan Thuc Ve Nguyen Tac Tap Quyen va Vai Khia Canh Trong Van De Ve Quan He Giua Lap Phap va Hanh Phap O Nuoc Ta Hien Nay’ (Some Perceptions of the Principles of “Unity of Power” and Few Aspects of the Relationship Between the Legislative and Executive of Bodes of Vietnam Today) *Nha Nuoc va Phap Luat* (2) 44.


Nguyen Duc Lam, 2002 ‘De Tien Toi Chuyen Nghiep’ (Towards Professionalism in the National Assembly) Tap Chi Nguoi Cau Lap Phap (6) 23.

2002 ‘Suy Nghia Ha Ky Hop: Cung Lo’ (Some Thoughts on a National Assembly Session) Tap Chi Nguoi Cau Lap Phap (9) 8.

Nguyen Duc Trieu, 2001 ‘Su Lanh Dao Cua Dong Doi Voi Hoi Nong Dan Viet Nam-Mot Nhan To Quyet Dinh Thang Loi Su Nghiep CNH, HDH Nong Nghiep, Nong Thon’ (The Leadership of the Party towards the Vietnamese Peasants’ Association—a Factor Deciding the Victory of Agriculture and Rural Industrialisation and Modernisation) Tap Chi Cong San (3) 25.

Nguyen Duy Quy, 1993 ‘On the Problem of Building a Juridical State in Our Country’ Vietnam Social Science 10


2003 ‘Phan Dau Vi Mot Nen Van Hoa Viet Nam Tien Tien Dan Da Ban Sac Dan Doc’ (Striving for a Vietnamese Culture that is Advanced and Profoundly Imbued with National Identity) Tap Chi Cong San (7) 12.

Nguyen Duy Trinh, 1956 ‘Phat Trien Che Do Dan Chu Nhan Dan va Bao Dam Quyen Tu Do Dan Chu Cua Nhan Dan’ (Developing the People’s Democratic Regime and Ensuring People’s Liberties and Democratic Rights) Hoa Tap (3) 23.


Nguyen Manh Cuong, 2002 ‘Yeuv Cau Cua Viec Xay Dung Nha Nuoc Phap Quyen Doi Voi Doi Moi To Chuc va Hoat Dong Cua cac Co Quan Tu Phap’ (How to Reform Judicial Authorities to Build up a Law-Based-State) Tap Chi Nguoi Cau Lap Phap (10) 30.


Nguyen Minh Tu, 1999 ‘Integration of Vietnam’s Economy into the Regional and World Economy at Present’ Vietnam Social Sciences (6) 91.

Nguyen Ngoc Tuan, 1993 ‘Renovating the Enterprise Model in Our Country’ Tap Chi Cong San (12) 29.


1993 Our Country’s Economic Laws During the Transition to the Market Economy’, Nha Nuoc va Phap Luat (2) 4.


1977 ‘Several Legal Matters Concerning Planning in Our Country’ Luat Hoc (2) April, 22.


1994 ‘Market Economy and the Leadership of Role of the Party’ Tap Chi Cong San (1) 29.


Nguyi Si Dung, 2002 ‘Quyet O Quoc Hoi’ (Decision Making in the National Assembly) Tap Chi Nguoi Cau Lap Phap (12) 3.


Nguyen Thanh Phu, 2001 ‘One Year’s Implementing the Enterprise Law’ 7 Vietnam Law and Legal Forum (78) 15.
2001 ‘Mot So Anh Hung Truc Tiep Cua Qua Trinh Hoi Nhap Linh Te Khu Vuc va The Gioi Doi Voi Phap Luat Viet Nam’ (Some Direct Influences of the World’s and Regional Economic Integration into Vietnamese Law) Tap Chi Nghien cucu Lap Phap 2
2003 ‘Noi Doanh Nhan Tim Den Cong Ly’ (Where do Entrepreneurs Go for Justice) Tap Chi Nghien Cuu Lap Phap (3) 45.
Pham Hong Hai, 2001 ‘Mot So Y Kien Ve Sua Doi Hien Phap 1992 Lien Quan Toi To Chuc va Hoat Dong Cua Vien Kiem Sat Nhan Dan’ (Some Opinions on Amending the 1992 Constitution Concerning the Organisation and Activities of the People’s Procuracy) Nha Nuoc va Phap Luat (9) 64.
2002 ‘Vai Tro Cua Luat Su Trong Hoat Dong To Tung—Thuc Trang va Phuong Huong Doi Moi’ (The Role of Lawyers in Procedures—A Look at Reality and Recommendations for Change) Tap Chi Nghien Cuu Lap (4) 110.
Pham Huy Ky, 1999 ‘Chu Nghia Ca Nhan: Dac Diem Bieu Hien va Bien Phap Khac Phuc’ (The Ways of Avoiding Individualism in Society) Nghien Cuu Ly Luan (Theoretical Studies) (2) 46.
Pham Ngoc Quang, 1995 ‘Van Hoa Chinh Tri Voi Tu Cach La Mot Pham Tru Cua Chinh Tri Hoc’ (Cultural Politics as a Category of Politics) Nha Nuoc va Phap Luat (14) 1.
Pham Van Bach, 1970 ‘Le Nin Voi Van De Phap Che Xa Hoi Chu Nghia’ (Lenin and Socialist Legality) Tap San Tu Phap (3) 9.
Pham Van Chuc, 2002 ‘Dang Co Chang Mot Toan Cau Hoa Cho Moi Ngui’ (Is There Now a Globalisation for all People?) Tap Chi Cong San (12) 33.
Pham Van Dong, 1990 ‘Ho Chi Minh: His Theory and Action’ Vietnam Social Sciences (2) 3.
Pham Van Hung, 2001 ‘Tu Tuong Ho Chi Minh Ve Viec To Chuc va Xay Dung Quoc Hoi Thu Hien Quyen Luc Cua Nhan Dan’ (Ho Chi Minh’s thoughts on the National Assembly as an Institution to Perform People’s Power) Tap Chi Nghien Cuu Lap Phap (4) 65.
2002 ‘Some Preliminary Ideas on the Change of Social Structure and Classes in Viet Nam During the Transition to a Socialist—Oriented Market Economy’ Vietnam Social Sciences (6) 31.
Quan Xuan Dinh, 2000 ‘The Political Economy of Vietnam’s Transformation Process’ 22 Contemporary Southeast Asia (2) 360.

Speranskii, I. A. 1963 ‘Mot So Van De Ve Viec Xay Dung Bo Luat Hinh Xo Viet’ (Some Issues about Drafting the Criminal Code of the Soviet Union) Tap San Tu Phap (8) 28.


Subramaniam, Surain 2001 ‘The Dual Narrative of “Good Governance”: Lessons for Understanding Political and Cultural Change in Malaysia and Singapore’ 23 Contemporary Southeast Asia (1), 65.


Ta Thu Khue, 1963 ‘Can Than Trong Trong Viec Ap Dung Kinh Nghiem Lien-Xo Vao Trinh Tu Phuc Tham’, (We need to be Cautious in Applying Soviet Experience in Appellate Procuers) Tap San Tu Phap (2) 12.


Thanh Duy, 1997 ‘Co So Khao Hoc va Van Hoa Trong Tu Tuong Ho Chi Minh Ve Nha Nuoc va Phap Luat’ (Scientific and Cultural Basis of Ho Chi Minh’s Ideas of State and Law) Tap Chi Cong San (1) 26.


Tran Dinh Huynh, 1999 ‘Mo Quan He Giua Tri Luc—Dao Duc—Phap Luat Trong Quan Ly Dat Nuoc Cua Chu Tich Ho Chi Minh’ (Relationship between Intelligence—Morality-Law in Ho Chi Minh Thoughts on Administration) To Chuc Nha Nuoc (5) 3.

Tran Duc, 1987 ‘Ve Cec Quy Luat Kinh Te Trong Thoi Ky qua Do Len Chu Nghia Xa Hoi’ (Economic Laws in the Transition Period to Socialism) Tap Chi Cong San (5) 69.


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Tran Ngoc Duong, 2005 ‘Noi Dung va Phuong Thuc Lanh Dao Cua Dang Doi Voi Quoc Hoi O Nuoc Ta Hien Nay’ (Leadership of the Communist Party Over the National Assembly in Vietnam—Content and Method) Tap Chi Nghien Cuu Lap Phap (2) 17.

Tran Thi Tuyet Nguyen Khac Kham et. al., 1967 ‘Bibliography on the Acceptance of Western Cultures in Vietnam for the XVth Century to the XX th Century’ 54 East Asian Cultural Studies 225.


1999 ‘Vietnam’s Trade in the Course of International Integration’ Vietnamese Studies (2) 121.


Tran Viet Phuong, 1999 ‘Globalisation and Integration into the World Economy’ Vietnamese Social Sciences (6) 84.


Truong Thanh Duc, 1999 ‘Nhung Bat Cap Trong Viec Xay Dung va Ban Hanh Van Ban Quy Pham Phap Luat’ (Defects in Drafting and Promulgating Legal Instruments) Nha Nuoc va Phap Luat (2) 22.


Vo Tan Tai, 2002 ‘False Religion a Smokescreen Hiding Political Reactionaries’ 8 Vietnam Law and Legal Forum (90) 13

Vo Thu Phuong, 1992 ‘Thang Tram Quyen Luc’ (Power Shift) Tap Chi Cong San (4) 63.

Vu Tri and Vo Vi, 2003 ‘Ve Bai Dan Chu va Viec Thuc Hien Quyen Dan Chu’ Tap Chi Nghien Cuu Luat Phap (3) 21.


Vu Duc Chieu, 1974 ‘Phap Che La Gi?’ (What is Legality?) Nha Xuat Ban Pho Thong (Popular Publishing), Hanoi, 156.
Vu Hoa, 1994 'The Ideological Heritage of Confucianism is Unimportant' Vietnamese Studies (1) 71.
Vu Ngoc Nhung, 1999 'Role of the State in Market Economy with Socialist Orientation' Vietnam Social Sciences (6) 19.
Vu Van Vinh, 1999 'Development of Confucianism in the Tran Dynasty and the Struggle of Confucian Scholars against Buddhism at the End of the XIV Century' Vietnam Social Science (2) 55.
1996 'Aspects of the Reception of Law' 44 American Journal of Comparative Law 335.
Whitmore, J. K. 1977 'Chiao-chih and Neo-Confucianism' 4 Ming Studies 51.
Williams, Harry 1998 'Property Reform and Legitimacy' 28 Journal of Contemporary Asia (16) 159.
Wladimir Andreff, 1993 'The Double Transition from Underdevelopment and from Socialism in Vietnam' 23 Journal of Contemporary Asia (4) 515.
Xuan Binh, 2004 'Foreign Lawyer’s Activities in Vietnam: Races Ahead' 10 Vietnam Law and Legal Forum (114) 32.

Selected Newspaper Articles

Author Unknown, 1999 'Chong Hinh Su Hoa: Moi Dung O Chi Thi Hoi Thao' (Fighting Against Criminalisation is only Conducted in Directives and Workshops) Thoi Bao Kinh Te Sai Gon 27 May, 14.
2001 'Quoc Hoi Nghe To Trinh Ve Viec Sua Doi Bo Sung Mot So Dieu Cua Hien Phap Nam 1992 va Mot So Thuyet Trinh Bao Cao Bao' Nhan Dan 21 November, 3.
Ba Tuan, 2002 ‘De Chanh An TANDTC Co Dieu Kien Bo Nghiem Tham Phan Duc Xac Thuc Hon’ (Allowing the Chief Justice of the Supreme People’s Court the Ability to Nominate Judges Will Be More Realistic) Phap Luat 19 March, 2.


Commentary, 1977 ‘Let Us Train and Work with a High Spirit of Collective Ownership’, Quan Doi Nhan Dan, (People’s Army), trans., 4 FBIS East Asia Daily Report, (63) 1 April, K8, K12–13.


D. Hoc, 2002 ‘Phai Dam Bao Tinh Doc Lap Xet Xu Cua Toa An’ (We Must Guarantee the Independence of the Court) Nguoi Lao Dong, 20 March, 2.


Duong Xuan Minh, 2001 ‘Viec Hinh Su Hoa Quan Le Giua Ngan Hang va Doanh Nghiep Rat Nang Ne’, (Heavy Criminalisation of Relationships between Banks and Businesses) Dau Tu (Investment) September, 18.


Hoang Hai Van, 2001 ‘Ky 3: Giu Dat va Dieu Khien Thi Truong’ (Number 3: Land ‘Keeping’ and Market Control) Tuoi Tre, 10 August, 3.


Khai Ly, 2001 ‘Cong Chuc Phai Tap Xin Loi Dan’ (Civil Servants Must Learn to Apologise) Thanh Nien 17 April, 5.

KT-PL, 2001 ‘Hinh Su Hoa De Lam Gi?’ (What is Criminalisation For?) Thoi Bao Kinh Te Viet Nam 16 April, 12.


Nguyen Nham, 1997 ‘Why is the Management of the State by Law Still Weak?’ Quan Doi Nhan Dan, 13 June, 3, trans., FBIS East Asia Daily Report 97-203.


Nguyen Trinh Binh, 1995 ‘It is Time to Amend the Law on Companies’ Saigon Giai Phong 3 July, 3.


Quy Hao, 1999 ‘Cap Rieng Giay CNQSD Dat, Giay So Huong Nha’ (The Issue of Separate Land Use Right Certificate and House Ownership Certificate) Thoi Bao Kinh Te Viet Nam, 21 August, 3.

Quy Hao, 2001 ‘Dung Lam Kho Doanh Nghiep’ (Don’t Make It Difficult for Business) Dau Tu, 9 April, 3.

Saigon Economic Times, 1999 ‘Hinh Su Hoa: Khong Phai Tai Luat’ (Criminalisation is not Due to the Laws) Thoi Bao Kinh Te Sai Gon, 27 May 12-13.

Tan Duc, 1999 ‘Bo Dieu 164 Cho Doanh Nhan Yen Tam Lam An’ (Revoke Article 164 to Make Businessman Feel Assured in Doing Their Business) Thoi Bao Kinh Te Sai Gon (Saigon Economic Times), 20 May, 10, 11.

Theo Duong Day Nong, 2001 ‘Day Dut Lon Tu Vu An Nho’ (Deep Concern Over a Small Case) Dau Tu 18 September, 6.


Tran Huu Hiep, 1996 ‘May Y Kien Ve Luat Cong Ty’ (A Number of Opinions on the Corporate Law) Dien Dan Doanh Nghiep (2) 12 January, 10.


Van Thong, 1999 ‘Tong Ke Khat Nha Dat: Phan Dinh Chua Ro Quan Ly Hanh Chinh Cua Nha Nuoc’ (House and Land Declaration: Unclear Determination of State Administration) Thoi Bao Kinh Te Sai Gon (Saigon Economic Times) 29 July, 37, 47.


Vu Duc Khien, 1999 ‘Renovation of Legislative Activity’ Nhan Dan 1 December, 6.


Xuan Bao and Nam Hong, 1995 ‘Problems in Implementing the Law on Companies’ Dien Dan Doanh Nghiep (Entrepreneur Forum) 28 September, 11.